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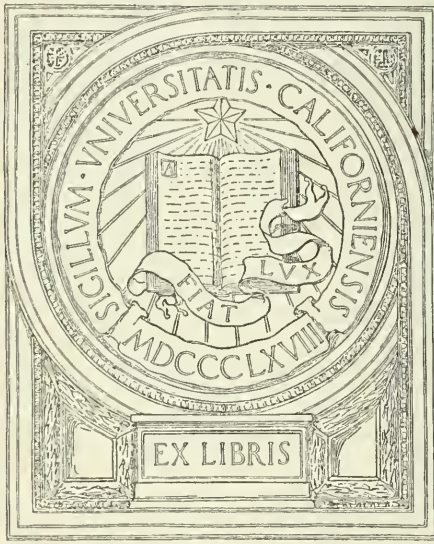

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51ST CONGRESS, 1st Session. | SENATE. | Ex. Doc. No. 55.

REPORT

ON

EXTRADITION,

PREPARED BY

THE THIRD ASSISTANT SECRETARY OF STATE

FOR THE

USE OF THE INTERNATIONAL AMERICAN CONFERENCE.

FEBRUARY 13, 1890.—Referred to the Committee on Foreign Relations and ordered to be printed.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1890.

DEPARTMENT OF STATE,
Washington, D. C., February 12, 1890.

To the President of the Senate:

In accordance with section 5 of the act of Congress approved May 24, 1888, I transmit herewith, for the information of the Senate and House of Representatives, a report on extradition, which was prepared by the Hon. J. B. Moore, Third Assistant Secretary of State, for the use of the Delegates to the International American Conference.

I have the honor to be, sir, your obedient servant,

JAMES G. BLAINE.

REPORT

BY

HON. J. B. MOORE.

EXTRADITION.

REPORT BY HON. J. B. MOORE.

EXTRADITION.

Improved means of travel which modern invention has afforded and the consequent ease of flight have made the extradition of criminals a subject of constantly growing importance. A person commits an atrocious offense, and in a few hours at most may be beyond the confines of the country whose laws he has violated. Once within the jurisdiction of another country he may defy the authorities of the place of his criminal activity unless the Government of the country to which he has fled, animated with a desire to promote the cause of general justice, shall take some action to deprive him of his immunity from punishment. Three methods of dealing with fugitive criminals have been suggested:

(1) Trial and punishment by the country of refuge.

(2) Expulsion.

(3) Extradition.

While the first method has found able advocates, it has generally been regarded as impracticable and as not satisfying the ends of justice, and its application has never seriously been attempted.

The inadequacy of expulsion lies in the fact that it only rids the country of refuge of a possibly dangerous individual, and affords no satisfaction to the laws which he has violated. It can be employed as a substitute for extradition only when, by reason of the character or circumstances of the offense, the fugitive ought not to be surrendered, but at the same time ought not to be afforded protection.

In extradition alone is found the efficient remedy for the evils to be treated. It rids the country of refuge of undesirable persons, and, at the same time, meets the demands of justice by handing the offender over to be tried according to the laws which he is charged to have broken.

It has been much discussed by publicists whether extradition is a matter of perfect or of imperfect obligation—a matter of duty or of comity. This question, however, has become of less and less importance as extradition has come to be more generally regulated by treaty. It has often been suggested that each nation should regulate extradition for itself, by a general law, enumerating the offenses for which fugitives should be delivered up, and that such delivery should be granted independently of treaty and of reciprocity. But the decided tendency has been to the regulation of the practice of extradition by treaty, thus insuring reciprocity, not only in principle, but also in reality.

In the delivery up of fugitive criminals three systems of procedure are found to exist. The first of these systems may be called the executive. Under this system the fugitive is delivered up by the chief executive authority of the State, upon such evidence as he may deem proper or prescribe. The second may be termed the legislative system, under which the chief executive, while he determines the question of surrender, nevertheless acts under the provisions of an express statute. The third system may be called the judicial, under which, while the chief executive may render the final decision on the question of delivery, the judicial authorities make the preliminary investigation of the criminality of the person charged.

In the United States the judicial system prevails. The preliminary investigation of the charge of crime is by law committed to the judicial authorities. If the decision of the officer who conducts the preliminary examination is that the evidence adduced is not sufficient to sustain the charge the alleged fugitive is released from custody and the question of surrender never comes before the executive for determination. If the decision of the examining magistrate is that the evidence is sufficient to sustain the charge he commits the prisoner to await the action of the executive, to whom the record of the magistrate's proceedings is transmitted for consideration, and the executive may either order the fugitive's surrender or may decline to do so.

The consideration of the proceedings for the examination of the charge of criminality naturally suggests the question, What should be the kind and degree of evidence required for the purpose of surrender? In some countries it is held that it is sufficient if it appear that a criminal prosecution for the

offense charged is actually pending against the accused in the country by which his extradition is demanded. In other countries it is requisite that at least *prima facie* evidence should be adduced of the guilt of the person charged. Such is the case in the United States, in which the rule is that such evidence of guilt must be furnished as would warrant the commitment of the alleged fugitive for trial for the offense with which he is charged if it had been committed in this country.

What crimes should be made the subject of extradition? The answer to this question must depend upon various conditions. Between contiguous countries the list of offenses would naturally be more extensive than between countries remote from each other, and would reach crimes of a more trivial character. The internal policy and the juridical system of a country would also affect its readiness to grant or its ability to procure extradition of fugitive criminals. It is generally conceded that no extradition can be required for political offenses save under the obligations of treaty, and such offenses are not generally admitted in conventions. But the question often arises as to what is a political offense. In the treaty between the United States and Belgium, concluded on the 13th June, 1882, there is the following provision:

> The provisions of this convention shall not be applicable to persons guilty of any political crime or offense or of one connected with such a crime or offense. A person who has been surrendered on account of one of the common crimes or offenses mentioned in Article II shall consequently in no case be prosecuted and punished in the State to which his extradition has been granted on account of a political crime or offense committed by him previously to his extradition or on account of an act connected with such a political crime or offense, unless he has been at liberty to leave the country for one month after having been tried, and, in case of condemnation, for one month after having suffered his punishment or having been pardoned. An attempt against the life of the head of a foreign government, or against that of any member of his family, when such attempt comprises the act either of murder or assassination, or of poisoning, shall not be considered a political offense or an act connected with such an offense.

This provision is understood to be merely declaratory of the law that a sovereign or a member of his family may be made the victim of a non-political crime. Offenses against customs laws are also generally excluded from extradition treaties, as well as offenses against laws relating to religion or to matters of peculiarly local concern, growing out of particular national polity.

It is not unusual to find in conventions a limitation of the crimes for which extradition may be demanded, based upon the length or severity of the punishment to which they may be subject. It may well be questioned whether such a limitation will be found to be satisfactory in its operation and secure such reciprocal action as may be desirable. The rule would appear to depend for its successful application chiefly upon the assimilation of penal legislation.

One of the most important practical questions relating to extradition is that of the provisional arrest and detention of alleged fugitives. The employment of the telegraph for the purpose of securing such arrest and detention is often essential to the capture and reclamation of the criminal. Frequently appropriate provisions on this subject are embodied in the treaties, although few of the extradition conventions which the Government of the United States has concluded with foreign powers contain such a stipulation. It is believed, however, that law and practice in the United States afford ample opportunity to secure the apprehension of fugitives from justice and their commitment for examination, in advance of a formal requisition for their surrender. In such case, some authorized agent of the foreign government, usually a consul, makes complaint on oath, upon information and belief, charging the alleged fugitive in proper form with the commission of a treaty offense within the jurisdiction of that government. This complaint is made with as great particularity as possible and is frequently supported by telegraphic information furnished by the complainant's government. If the complaint be sufficient, the magistrate before whom it is made issues his warrant for the arrest of the person charged, and, when he is arrested, commits him for such time as may, under the circumstances, be reasonable for the production of the formal evidences of criminality. (See Appendix A.)

Should citizens be surrendered? The general rule unquestionably is to refuse to surrender them. The justification for this rule is thought to be found in the provision which the laws of most countries make for the punishment of citizens for offenses committed abroad, and in the alleged superior right of trial belonging to the country of which the fugitive is a citizen. As the great object of extradition is the trial and punishment of an offender under the laws which he has violated and at the place of such violation, an object rendered important by

considerations of convenience as well as by the just requirements of the penal law, it may well be questioned whether nations should persist in the general exemption of their citizens from extradition process.

Should a person surrendered for one offense be tried for another, before he has had an opportunity to return to the jurisdiction from which he was taken? The argument against such trial has been that to admit that it might take place would encourage abuse of extradition process and open the door to prosecutions for political offenses. In reply to this it may well be said that if the good faith of the demanding government be clear and the prosecution sought to be instituted non-political, it is an unnecessary defeat of justice to require the culprit to be set at liberty, merely because he was surrendered for another offense. It has been suggested that at least a partial remedy for this condition might be found in limiting the right of trial to treaty offenses. This, however, does not meet the objection. But might not a complete remedy be found in the provision that a person surrendered for one offense should not be tried for another, if the surrendering government object; and that before trial for an offense other than that for which the extradition was granted, notice should be given to the surrendering state of the intention to try for such other offense?

It may happen that several demands are presented by different governments for the surrender of a single individual. In such a case, which demand should be complied with? The rule generally adopted in the treaties of the United States is to honor the demand first presented.

To what extent may a government intervene in behalf of one of its citizens who is in a foreign country and is made the subject of a demand of extradition by a third state? Can an objection to his surrender be based upon the fact that no treaty of extradition exists between the demanding state and that within whose jurisdiction he is? And, if it be held that the true rule is that he is entitled only to the same treatment as a citizen of the country on which the demand is made, may his government make it a ground of objection to his extradition that citizens of that country are by its laws or its practice exempt from surrender?

It is the practice of the Government of the United States to decline extradition in the absence of treaty. It has concluded

with foreign countries, in relation to extradition, the following conventions:

Countries.	When concluded.	Countries.	When concluded.
Austria	July 3, 1856	Mexico	Dec. 11, 1861
Baden	Jan. 30, 1857	Netherlands‖	May 22, 1880
Bavaria	Sept. 12, 1853		June 2, 1887
Belgium*	Mar. 19, 1874	Nicaragua	June 25, 1870
	June 13, 1882	North German Union	Feb. 22, 1868
Bremen	Sept. 6, 1853	Oldenburg	Dec. 30, 1853
Dominican Republic	Feb. 8, 1867	Orange Free State	Dec. 22, 1871
Ecuador	June 28, 1872	Ottoman Empire	Aug. 11, 1874
France	Nov. 9, 1843	Peru¶	Sept. 12, 1870
	Feb. 24, 1845	Prussia and other States of the Germanic Confederation.	June 16, 1852
	Feb. 10, 1858		
Great Britain †	Nov. 19, 1794		
	Aug. 9, 1842	San Salvador	May 23, 1870
Hanover‡	Jan. 18, 1855	Schaumburg-Lippe	June 7, 1854
Hawaiian Islands	Dec. 20, 1849	Spain**	Jan. 5, 1877
Hayti	Nov. 3, 1864		Aug. 7, 1882
Italy§	Mar. 23, 1868	Sweden and Norway	Mar. 21, 1860
	Jan. 21, 1869	Swiss Confederation	Nov. 25, 1850
	June 11, 1884	Two Sicilies††	Oct. 1, 1855
Japan	Apr. 29, 1886	Venezuela‡‡	Aug. 27, 1860
Luxemburg	Oct. 29, 1883	Würtemburg	Oct. 13, 1853
Mecklenburg-Schwerin	Nov. 26, 1853		July 27, 1868
Mecklenburg-Strelitz	Dec. 2, 1853		

* Replaced by treaty of 1882.
† Expired October 28, 1807.
‡ Terminated by absorption of Hanover by Prussia.
§ Amended by treaties of 1869 and 1884.
‖ Replaced by treaty of 1887.
¶ Terminated March 31, 1886.
** Amended by treaty of 1882.
†† Replaced by treaty of 1868 with Italy and its amendments.
‡‡ Terminated October 22, 1870.

Appendix A.

PROVISIONAL ARREST AND PROCEDURE.

No. 18] DEPARTMENT OF STATE,
Washington, January 28, 1889.

JOHN R. PARKHURST, Esq.,
&c., &c., &c., Brussels.

SIR: I have to acknowledge the receipt of Mr. Tree's dispatch, No. 406, of the 31st of October last, in which he informed the Department of the provisional arrest and detention by the Belgian authorities, upon the request of this Government, through its legation at Brussels, of one Sambalino, who has since been extradited to the United States.

With his dispatch Mr. Tree inclosed a copy and translation of a note of his excellency the Prince de Chimay, Belgian minister of foreign affairs, bearing date the 27th of October, and responding to Mr. Tree's request for Sambalino's provisional detention. His excellency states that the consul of the United States at Antwerp had solicited the temporary arrest of the fugitive, who had, accordingly, been detained at Antwerp since the 19th of October. His excellency then observes that the convention between the United States and Belgium of the 30th of June, 1882, does not contain any stipulation determining the conditions under which provisional arrest may be claimed from the Belgian Government and reciprocally from the Government of the United States. His excellency further states that until 1886 the telegraphic requests of the Belgian Government for such arrest had been welcomed by the Secretary of State of the United States and the judicial authorities in this country; but that a change then took place. The Belgian Government, he states, having solicited the temporary arrest of two fugitives, named Mandelins and Edelhausen, the Secretary of State informed His Belgian Majesty's representative at Washington, on the 2d of August, 1886, that, although the Department of State had in some preceding cases issued a warrant with a view to the arrest of fugitive criminals without waiting for the presentation of formal evidence of the offense charged, such a proceeding would not be followed thereafter unless expressly authorized by treaty stipulation. It is remarked, however, that in the note conveying this decision the Secretary of State observed that the provisions of section 5270 of the Revised Statutes of the United States were sufficient, in the absence of treaty stipulations, to cover the case then under consideration. But the minister of foreign affairs states that the judge at New York decided differently, and that subsequently the Belgian chargé d'affaires at Washington unsuccessfully endeavored to secure an additional provision in the treaty to secure arrest on telegraphic information.

It does not appear by our records in what form the question above stated came before a judicial magistrate in New York; whether he gave his opinion in a case actually before him, or merely by way of advice in advance of a case arising. But in the view the Department takes of the subject these considerations are not material.

At or near the time when this Department, in 1886, notified the minister of Belgium, in the case of Mandelius and Edelhausen, that the issuance of preliminary certificates to obtain the provisional arrest of fugitives had been discontinued, save in cases of explicit treaty requirement, applications for such papers were made by other governments than that of Belgium and refused. It is well known that the issuance of these so-called warrants of arrest was not required by any statute of the United States, but was begun many years ago, and practiced from time to time, in consequence of the opinion expressed by some of our judges that our judicial magistrates possessed no jurisdiction to entertain proceedings for the apprehension and committal of alleged fugitive criminals without a previous requisition from the government of the country in which the offense was committed upon the President of the United States, and the obtainment of his authority for such proceedings.

In recent years, however, there had been a decided preponderance of opinion, to the effect that the intervention of the President was not essential, under our laws, to secure the arrest and detention of fugitives from justice in this country, and in consequence of this, and as no such intervention was expressly authorized, the Department, in 1886, came to the conclusion to abstain from issuing preliminary certificates or warrants, except in cases of express conventional obligation.

Since that time the question has been brought before the Supreme Court of the United States and the position of the Department sustained. I refer to the case of George Benson, alias M. R. Mayer, whose extradition from the United States was demanded by the Government of Mexico in 1886.

On the 4th of December of that year the Mexican minister at this capital informed the Department that he had been instructed by his Government, by telegraph, to apply to that of the United States for the extradition of the fugitive in question, who had been guilty of a swindling operation in the City of Mexico, having falsely represented himself to be the agent of Madame Adelina Patti for the sale of tickets for an operatic performance, and thus fraudulently obtained upwards of $20,000, with which he had absconded and was believed to have fled to the United States. The minister requested the Secretary of State to cause orders to be issued for the fugitive's arrest.

To this communication the Department replied on the 8th of December, 1886, saying that in its opinion the provisions of section 5270 of the Revised Statutes of the United States were sufficient for the purpose of obtaining the fugitive's arrest, but at the same time calling attention to the fact that the minister's note contained no specification of any of the offenses enumerated in the extradition treaty between the United States and Mexico of December 11, 1861.

On the 8th of December the Mexican minister replied that he deemed the offense with which the fugitive was charged to be comprised in that of forgery, mentioned in the third article of the treaty; and referred to the re-

quest contained in his note of the 4th of December in respect to the fugitive's arrest.

On the 15th of December the Department replied, still declining to act, and on the same day the minister, being convinced of the correctness of the Department's position, withdrew his requests. Copies of this correspondence are herewith inclosed.

Having arrived in the city of New York, Benson was arrested on a warrant issued by Samuel H. Lyman, esq., commissioner of the circuit court of the United States for the southern district of New York, without the intervention of this Department in the matter, upon a complaint made before him by the consul-general of Mexico at the city of New York, charging the fugitive with having committed the crime of forgery in Mexico. The proceedings before the commissioner resulted in the commitment of the fugitive for surrender on that charge.

A writ of habeas corpus was then, upon proper application, allowed by Justice Blatchford, of the Supreme Court of the United States, to bring the prisoner before the circuit court of the United States for the southern district of New York. Upon the hearing in the circuit court the writ was discharged and the prisoner remanded to the custody of the United States marshal. From this judgment an appeal was taken to the Supreme Court of the United States.

In the course of its unanimous judgment, which was delivered by Mr. Justice Miller, that tribunal said:

"This proceeding was instituted before the commissioner, under Title LXVI of the Revised Statutes of the United States, concerning extradition. The first section reads as follows:

'SEC. 5270. Whenever there is a treaty or convention for extradition between the Government of the United States and any foreign Government any justice of the Supreme Court, circuit judge, district judge, commissioner authorized to do so by any of the courts of the United States, or judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within the limits of any State, district, or Territory with having committed within the jurisdiction of any such foreign Government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or commissioner, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign Government for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.'

"There is no evidence in this record, at least there is no copy of any demand or requisition made by the Mexican authorities upon our Government for the extradition of this prisoner. The proceedings, therefore, up to this time rest upon the initiative authorized by the statutes upon that subject, the

Mexican Government, however, being represented by counsel, and the correspondence with its officers which was introduced into the record showing their interest in the matter and their purpose to have this prisoner brought to that country for trial.

"The treaty under which this right to arrest the prisoner and detain him for extradition is asserted was concluded at Mexico, December 11, 1861, and proclaimed by the President of the United States June 20, 1862 (12 Stat., 1199). It has the usual provisions, that the contracting parties shall, on requisitions made in their name, deliver up to justice persons who, being accused of the crimes enumerated in article 3, committed within the jurisdiction of the requiring party, shall seek an asylum or shall be found within the territories of the other. * * *

"As the case appears before us, on the transcript of the evidence produced before Commissioner Lyman and before the circuit court on the writ of habeas corpus, it is considerably confused, but very full and elaborate. Several questions in regard to the introduction of evidence, which were raised before the commissioner, some of them concerning the sufficiency of the authentication of papers and depositions taken in Mexico, and as to the testimony of persons supposed to be expert in the law of that country regarding the subject, are found in the record, which we do not think require notice here. The writ of habeas corpus, directed to the marshal of the southern district of New York, does not operate as a writ of error, and many of the orders and decisions made by the commissioner at the hearing which took place before him become unimportant in the examination of the sufficiency of the proceedings under which he ordered the prisoner into custody. The main question to be considered upon such a writ of habeas corpus must be: Had the commissioner jurisdiction to hear and decide upon the complaint made by the Mexican consul; and also, was there sufficient legal ground for his action in committing the prisoner to await the requisition of the Mexican authorities?

"In regard to the jurisdiction of the commissioner to hear the complaint no doubt can be entertained."

And after a full examination of the case the judgment of the Supreme Court was concluded as follows:

"We are of opinion that the decision of Commissioner Lyman committing the prisoner to the custody of the marshal to await the requisition of the Mexican Government was justified, and the judgment of the circuit court dismissing the writ of habeas corpus is accordingly affirmed."

This judgment settles the point that under section 5270 of the Revised Statutes of the United States a fugitive from the justice of a Government with which the Government of the United States has a treaty or convention of extradition may be arrested in this country and held for examination on a charge of having committed in the foreign country an offense specified in such treaty or convention without any previous intervention on the part of the President or proof that a requisition has been made. Under this statute is it believed that there exists in the United States a very liberal system of provisional arrest and detention of fugitives from foreign justice, under which, upon oaths made on information and belief (a requirement which the preliminary mandate formerly issued by the Executive did not dispense with), such fugitives are constantly arrested and held without

interference on the part of the executive branch of the Government of the United States to await examination before our judicial magistrates in accordance with our laws. No time is specified during which a fugitive may be so held; but the judicial officer decides in each case what term is reasonable under all the circumstances for the detention of the fugitive pending the reception of the formal proofs of his culpability and their examination. Save in cases in which the question of the necessity of executive interference was formerly raised, this Department has received no complaints of the refusal of judicial magistrates to grant proper facilities. On the contrary, it is believed that such magistrates have generally construed their powers with as much liberality as is consistent with the security which all persons, both citizens and foreigners, should enjoy against unfounded arrest and detention.

It is hoped that this statement will prove satisfactory to the Belgian Government in respect to the subject of provisional arrests in the United States, and you are at liberty to communicate a copy of this paper to his excellency the minister of foreign affairs.

I am, sir, your obedient servant,

T. F. BAYARD.

[Inclosure 1.]

Mr. Romero to Mr. Bayard.

[Translation.]

LEGATION OF MEXICO,
Washington, December 4, 1886. (Received December 4.)

Mr. SECRETARY: I have the honor to inform you that I have received instructions from my Government, by telegraph, to apply to that of the United States for the extradition of a German named M. R. Mayer, who has been guilty of a swindling operation in the City of Mexico, having represented himself to be Mr. Abbey's agent for the sale of season tickets for the opera of Madame Adelina Patti's company, and having absconded from that city after fraudulently securing upwards of $20,000. To-day's papers have published the particulars of this swindle.

Mayer appears to have gone in the direction of El Paso, Texas, on his way to this country. He is a short and stout man, of light complexion, with black hair, heavy moustache, and about forty years of age.

Pending the receipt of the necessary documents from the Mexican authorities, making application for his extradition, I will thank you, Mr. Secretary, if you have no objections, to cause orders to be issued for Mayer's arrest, so that the ends of justice may not be defeated by his escape.

Be pleased, etc.,

M. ROMERO.

[Inclosure 2.]

Mr. Bayard to Mr. Romero.

DEPARTMENT OF STATE,
Washington, December 8, 1886.

SIR: Referring to your note of the 4th instant, stating that a German, named M. R. Mayer, who has been guilty of a swindling operation in the City of Mexico, having fraudulently obtained upwards of $20,000 by representing himself to be the agent of Mr. Abbey for the sale of season tickets for an operatic performance by the company of Madame Adelina Patti, is believed to have fled to the United States, and requesting this Department to cause orders to be issued for Mayer's arrest, so that the ends of justice may not be defeated by his escape, I have the honor to inform you that, in the opinion of the Department, the provisions of section 5270 of the Revised Statutes of the United States are sufficient for the purpose of obtaining the fugitive's arrest, and that the Department is not authorized to take any action in the present stage of the case. It may not, however, be improper to observe that there is no specification in your note of any of the extraditable offenses enumerated in the treaty of December 11, 1861, which regulates the subject of extradition between the United States and Mexico.

Accept, etc.,

T. F. BAYARD.

[Inclosure 3.]

Mr. Romero to Mr. Bayard.

[Translation.]

MEXICAN LEGATION,
Washington, December 8, 1886. (Received December 9.)

Mr. SECRETARY: I have had the honor to receive your note of this date, wherein, referring to my note of the 4th instant, in which I asked the arrest of an individual who assumed in the City of Mexico the name of Marcus R. Mayer, agent of Mr. Henry E. Abbey, and who, according to reports published by the papers of New York, appears to be really named Charles Bourton, and who in that city fraudulently obtained a considerable sum of money through the sale of tickets for the operatic performances of Signora Adelina Patti, you were pleased to state to me that, in the opinion of your Department, the provisions of section 5270 of the Revised Statutes of the United States are sufficient for the purpose of obtaining the arrest of the fugitive, at the same time remarking that my note did not express any offense enumerated in the treaty of December 11, 1861, between Mexico and the United States, as having been committed by the person in question.

Although, because sufficient time therefor has not supervened, the data to enable a judgment to be formed of the precise nature of the offense have not yet been received, I deem it to be comprised in that of forgery mentioned in the third article of the convention of December 11, 1861, since Bourton assumed in Mexico the name of Marcus R. Mayer, who is the real

agent of Mr. Abbey, and under that name issued tickets and gave receipts for the money which was paid to him.

I have already given instructions to the Mexican consuls at El Paso and Laredo, Texas, and in the cities of New York and New Orleans, to go before the judges of the respective districts for the purpose of procuring the arrest of Bourton, in compliance with the provisions of section 5270 of the Revised Statutes of the United States; but these instructions will be insufficient if the aforesaid consuls be not aided by the police of the respective localities, since as the guilty fugitive comes in disguise it will be very difficult for the consuls mentioned to know when he arrives in or passes through the cities named, and only the vigilance of the police can discover this. For this reason the recommendation which I made in my note of the 4th instant had also for its object that the police should be advised, that they might exert their vigilance in order to be able to apprehend the fugitive, if the Department should deem itself authorized to do so.

Be pleased, etc.,

M. ROMERO.

[Inclosure 4.]

Mr. Bayard to Mr. Romero.

DEPARTMENT OF STATE,
Washington, December 15, 1886.

SIR: Referring to your note of the 8th instant, relative to the case of Marcus R. Mayer, alias Charles Bourton, charged with obtaining money in the City of Mexico by the fraudulent sale of tickets for the operatic performances of the company of Madame Adelina Patti, I have the honor to inform you that this Department, while desirous of aiding in every proper way the execution of the treaty of the 11th of December, 1861, is not, in my judgment, authorized to advise or instruct the police in the various localities named in your note to exert vigilance in the apprehension of the fugitive.

As has already been pointed out, the provision of section 5270 of the Revised Statutes are deemed sufficient for the purpose of obtaining the fugitive's arrest, and unless some other way is prescribed by treaty those provisions contain the only method prescribed by the laws of the United States for the institution of proceedings in extradition. Under that law extradition proceedings are initiated, like any other criminal prosecution, by the issuance of a warrant of arrest by a competent magistrate upon evidence required by statute of the commission of the offense charged.

The arrest of the fugitive upon this warrant is the duty of local police authorities, over whom this Department exercises no supervision, and whom it is not competent to advise or instruct.

Accept, etc.,

T. F. BAYARD.

[Inclosure 5.]

Mr. Romero to Mr. Bayard.

[Translation.]

MEXICAN LEGATION,
Washington, December 15, 1886. (Received December 16.)

Mr. SECRETARY: I have had the honor to receive your note of to-day, in which, acknowledging that from this legation of the 8th instant, concerning the case of Marcus B. Mayer alias Charles Bourton, accused of fraudulently obtaining money in the City of Mexico, by means of the sale of counterfeit tickets for the concerts of Madame Adelina Patti, you were pleased to inform me that it was not in the power of your Department either to advise or instruct the police authorities in the places at which it seemed likely that Bourton would cross from Mexico into the United States, and that the only method of obtaining his arrest, in the absence of a special provision prescribed by treaty, was contained in section 5270, Revised Statutes of the United States.

I am convinced that the Department of State has no power to intervene in this matter, conformably with the laws of this country, and consequently I withdraw the requests I made of you in my notes of the 4th and 8th instants concerning this affair.

I have instructed the Mexican consuls at the points mentioned in the second of my notes above referred to to supply the place of, the case arising and in so far as they may be able, the intervention of your Department requested in my two notes.

Be pleased, etc.,

M. ROMERO.

Appendix B.

EXTRADITION TREATIES OF THE UNITED STATES WITH FOREIGN POWERS, WITH AN ANALYSIS.

AUSTRIA-HUNGARY.

Concluded July 3, 1856; *Ratifications exchanged at Washington December* 13, 1856; *Proclaimed December* 15, 1856.

Whereas it is found expedient, for the better administration of justice and the prevention of crime within the territories and jurisdiction of the parties, respectively, that persons committing certain heinous crimes, being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; and also to enumerate such crimes explicitly: and whereas the laws of Austria forbid the surrender of its own citizens to a foreign jurisdiction, the Government of the United States, with a view of making the convention strictly reciprocal, shall be held equally free from any obligation to surrender citizens of the United States; therefore, on the one part the United States of America, and on the other part His Majesty the Emperor of Austria, having resolved to treat on this subject, have, for that purpose, appointed their respective Plenipotentiaries, to negotiate and conclude a convention; that is to say:

The President of the United States, William L. Marcy, Secretary of State; and His Majesty the Emperor of Austria, John George Chevalier de Hülsemann, his said Majesty's Minister Resident near the Government of the United States; who, after reciprocal communication of their respective powers, have agreed to and signed the following articles:

Article I.

It is agreed that the United States and Austria shall, upon mutual requisitions by them or their ministers, officers or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the fabrication or circulation of counterfeit money, whether coin or paper money, or the embezzlement of public moneys, committed within the jurisdiction of either party, shall seek an asylum or shall be found within the territories of the other: *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offense had there been committed; and the respective judges and other magistrates of the

two Governments shall have power, jurisdiction and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive. The provisions of the present convention shall not be applied, in any manner, to the crimes enumerated in the first article committed anterior to the date thereof nor to any crime or offense of a political character.

ARTICLE II.

Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

ARTICLE III.

Whenever any person accused of any of the crimes enumerated in this convention shall have committed a new crime in the territories of the State where he has sought an asylum or shall be found, such person shall not be delivered up, under the stipulations of this convention, until he shall have been tried, and shall have received the punishment due to such new crime, or shall have been acquitted thereof.

ARTICLE IV.

The present convention shall continue in force until the first of January, eighteen hundred and fifty-eight; and if neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the high contracting parties shall have given notice to the other of such intention; each of the high contracting parties reserving to itself the right of giving such notice to the other at any time after the expiration of the said first day of January, 1858.

ARTICLE V.

The present convention shall be ratified by the President, by and with the advice and consent of the Senate of the United States, and by His Majesty the Emperor of Austria, and the ratifications shall be exchanged at Washington within six months from the date hereof, or sooner if possible.

In faith whereof the respective Plenipotentiaries have signed this convention and have hereunto affixed their seals.

Done in duplicate at Washington, the third day of July, in the year of our Lord one thousand eight hundred and fifty-six, and of the Independence of the United States the eightieth.

[SEAL.] W. L. MARCY.
[SEAL.] HÜLSEMANN.

BADEN.

Concluded January 30, 1857; *Ratifications exchanged at Berlin April* 21, 1857; *Proclaimed May* 19, 1857.

Whereas it is found expedient, for the better administration of justice and the prevention of crime within the territories and jurisdiction of the parties, respectively, that persons committing certain heinous crimes, being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; and also to enumerate such crimes explicitly; and whereas the laws and constitution of Baden do not allow its Government to surrender its own citizens to a foreign jurisdiction, the Government of the United States, with a view of making the convention strictly reciprocal, shall be held equally free from any obligation to surrender citizens of the United States; therefore, on the one part the United States of America, and on the other part His Royal Highness the Grand Duke of Baden, having resolved to treat on this subject, have, for that purpose, appointed their respective Plenipotentiaries to negotiate and conclude a convention; that is to say:

The President of the United States of America, Peter D. Vroom, Envoy Extraordinary and Minister Plenipotentiary of the United States at the Court of the Kingdom of Prussia; and His Royal Highness the Grand Duke of Baden, Adolph, Baron Marschall de Bieberstein, His said Royal Highness's Envoy Extraordinary and Minister Plenipotentiary at the Court of His Majesty the King of Prussia, &c., &c., &c.;

Who, after reciprocal communication of their respective powers, have agreed to and signed the following articles:

Article I.

It is agreed that the United States and Baden shall, upon mutual requisitions by them, or their ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the fabrication or circulation of counterfeit money, whether coin or paper money, or the embezzlement of public moneys, committed within the jurisdiction of either party, shall seek an asylum, or shall be found within the territories of the other: *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been committed; and the respective judges and other magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates, respectively, to the end that the evidence of criminalty may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of

the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive.

The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

Nothing in this article contained shall be construed to extend to crimes of a political character.

ARTICLE II.

Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

ARTICLE III.

Whenever any person accused of any of the crimes enumerated in this convention shall have committed a new crime in the territories of the State where he has sought an asylum or shall be found, such person shall not be delivered up under the stipulations of this convention until he shall have been tried, and shall have received the punishment due to such new crime, or shall have been acquitted thereof.

ARTICLE IV.

The present convention shall continue in force until the first of January, one thousand eight hundred and sixty; and if neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the high contracting parties shall have given notice to the other of such intention; each of the high contracting parties reserving to itself the right of giving such notice to the other at any time after the expiration of the said first day of January, one thousand eight hundred and sixty.

ARTICLE V.

The present convention shall be ratified by the President, by and with the advice and consent of the Senate of the United States, and by the Government of Baden; and the ratifications shall be exchanged in Berlin within one year from the date hereof, or sooner if possible.

In faith whereof the respective Plenipotentiaries have signed this convention, and have hereunto affixed their seals.

Done in duplicate, at Berlin, the thirtieth day of January, one thousand eight hundred and fifty-seven, and the eighty-first year of the independence of the United States.

[SEAL.] P. D. VROOM.

[SEAL.] ADOLPH BAR. MARSCHALL de BIEBERSTEIN.

BAVARIA.

Concluded September 12, 1853; *Ratifications exchanged at London November* 1, 1854; *Proclaimed November* 18, 1854.

The United States of America and His Majesty the King of Bavaria, actuated by an equal desire to further the administration of justice, and to prevent the commission of crimes in their respective countries, taking into consideration that the increased means of communication between Europe and America facilitate the escape of offenders, and that, consequently, provision ought to be made in order that the ends of justice shall not be defeated, have determined to conclude an arrangement destined to regulate the course to be observed in all cases with reference to the extradition of such individuals as, having committed any of the offenses hereafter enumerated, in one country, shall have taken refuge within the territories of the other. The constitution and laws of Bavaria, however, not allowing the Bavarian Government to surrender their own subjects for trial before a foreign court of justice, a strict reciprocity requires that the Government of the United States shall be held equally free from any obligation to surrender citizens of the United States. For which purposes the high contracting powers have appointed as their Plenipotentiaries:

The President of the United States, James Buchanan, Envoy Extraordinary and Minister Plenipotentiary of the United States at the Court of the United Kingdom of Great Britain and Ireland; His Majesty the King of Bavaria, Augustus Baron de Cetto, his said Majesty's Chamberlain, Envoy Extraordinary and Minister Plenipotentiary at the Court of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Knight Commander of the Order for Merit of the Bavarian Crown and of the Order for Merit of St. Michael, Knight Grand Cross of the Royal Grecian Order of our Saviour;

Who, after reciprocal communication of their respective full powers, found in good and due form, have agreed to the following articles:

Article I.

The Government of the United States and the Bavarian Government promise and engage, upon mutual requisitions by them or their ministers, officers or authorities, respectively made, to deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged papers, or the fabrication or circulation of counterfeit money, whether coin or paper money, or the embezzlement of public moneys, committed within the jurisdiction of either party, shall seek an asylum, or shall be found within the territories of the other: *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been committed; and the respective judges and other magistrates of the two Governments shall have power, jurisdiction and authority,

upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive.

The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

ARTICLE II.

The stipulations of this convention shall be applied to any other State of the German Confederation which may hereafter declare its accession thereto.

ARTICLE III.

None of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

ARTICLE IV.

Whenever any person, accused of any of the crimes enumerated in this convention, shall have committed a new crime in the territories of the State where he has sought an asylum or shall be found, such person shall not be delivered up under the stipulations of this convention until he shall have been tried and shall have received the punishment due to such new crime, or shall have been acquitted thereof.

ARTICLE V.

The present convention shall continue in force until the first of January, one thousand eight hundred and fifty-eight; and if neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the high contracting parties shall have given notice to the other of such intention; each of the high contracting parties reserving to itself the right of giving such notice to the other at any time after the expiration of the said first day of January, one thousand eight hundred and fifty-eight.

ARTICLE VI.

The present convention shall be ratified by the President, by and with the advice and consent of the Senate of the United States, and by the Government of Bavaria, and the ratifications shall be exchanged in London within fifteen months from the date hereof, or sooner if possible.

In faith whereof the respective Plenipotentiaries have signed this convention and have hereunto affixed their seals.

Done in duplicate, in London, the twelfth day of September, one thousand eight hundred and fifty-three, and the seventy-eighth year of the independence of the United States.

[SEAL.] JAMES BUCHANAN.

[SEAL.] A. de CETTO.

BELGIUM.

Concluded March 19, 1874; *Ratifications exchanged at Brussels April* 30, 1874; *Proclaimed May* 1, 1874.

The United States of America and His Majesty the King of the Belgians having judged it expedient with a view to the better administration of justice, and to the prevention of crimes within their respective territories and jurisdiction that persons convicted of, or charged with, the crimes hereinafter specified, and being fugitives from justice should, under certain circumstances, be reciprocally delivered up, have resolved to conclude a convention for that purpose, and have appointed as their Plenipotentiaries: the President of the United States of America, Hamilton Fish, Secretary of State of the United States; and His Majesty the King of the Belgians, Maurice Delfosse, His Majesty's Envoy Extraordinary and Minister Plenipotentiary in the United States, who after reciprocal communication of their full powers, found in good and due form, have agreed upon the following articles, to wit:

ARTICLE I.

The Government of the United States and the Government of Belgium mutually agree to deliver up persons, who having been convicted of, or charged with any of the crimes specified in the following Article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum, or be found within the territories of the other: Provided that this shall only be done upon such evidence of criminality as according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial, if the crime had been there committed.

ARTICLE II.

Persons shall be delivered up who shall have been convicted of or be charged, according to the provisions of this Convention, with any of the following crimes:

1. Murder, comprehending the crimes designated in the Belgian penal code by the terms of parricide, assassination, poisoning and infanticide.

2. The attempt to commit murder.

3. The crimes of rape, arson, piracy and mutiny on board a ship, whenever the crew or part thereof, by fraud or violence against the commander, have taken possession of the vessel.

4. The crime of burglary, defined to be the act of breaking and entering by night into the house of another with the intent to commit felony: and the crime of robbery, defined to be the act of feloniously and forcibly taking from the person of another, goods or money by violence or putting him in fear, and the corresponding crimes punished by the Belgian laws under the description of thefts committed in an inhabited house by night, and by

breaking in by climbing or forcibly; and thefts committed with violence or by means of threats.

5. The crime of forgery, by which is understood the utterance of forged papers, and also the counterfeiting of public, sovereign or government acts.

6. The fabrication or circulation of counterfeit money either coin or paper, or of counterfeit public bonds, bank notes, obligations or, in general, anything being a title or instrument of credit; the counterfeiting of seals, dies, stamps and marks of state and public administrations, and the utterance thereof.

7. The embezzlement of public moneys committed within the jurisdiction of either party by public officers or depositaries.

8. Embezzlement by any person or persons, hired or salaried, to the detriment of their employers when the crime is subject to punishment by the laws of the place where it was committed.

ARTICLE III.

The provisions of this treaty shall not apply to any crime or offence of a political character nor to any crime or offence committed prior to the date of this treaty, except the crimes of murder and arson, and the person or persons delivered up for the crimes enumerated in the preceding article shall in no case be tried for any crime committed previously to that for which his or their surrender is asked.

ARTICLE IV.

Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this Convention.

ARTICLE V.

If the person whose surrender may be claimed pursuant to the stipulations of the present treaty shall have been arrested for the commission of offences in the country where he has sought an asylum, or shall have been convicted thereof, his extradition may be deferred until he shall have been acquitted, or have served the term of imprisonment to which he may have been sentenced.

ARTICLE VI.

Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties, or, in the event of the absence of these from the country or its seat of government, they may be made by superior consular officers.

If the person whose extradition may be asked for shall have been convicted of a crime, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal, and an attestation of the official character of the judge by the proper executive authority, and of the latter by the Minister or Consul of the United States or of Belgium, respectively, shall accompany the requisition. When, however, the fugitive shall have been merely charged with crime, a duly authenticated copy of

the warrant for his arrest in the country where the crime may have been committed and of the depositions upon which such warrant may have been issued, must accompany the requisition as aforesaid. The President of the United States, or the proper executive authority in Belgium, may then issue a warrant for the apprehension of the fugitive, in order that he may be brought before the proper judicial authority for examination. If it should then be decided that, according to the law and the evidence, the extradition is due pursuant to the treaty, the fugitive may be given up according to the forms prescribed in such cases.

ARTICLE VII.

The expenses of the arrest, detention and transportation of the persons claimed shall be paid by the government in whose name the requisition has been made.

ARTICLE VIII.

This Convention shall take effect twenty days after the day of the date of the exchange of ratifications, and shall continue in force during five years from the day of such exchange; but if neither party shall have given to the other six months' previous notice of its intention to terminate the same, the Convention shall remain in force five years longer, and so on.

The present Convention shall be ratified, and the ratifications exchanged at Brussels so soon thereafter as possible.

In witness whereof the respective Plenipotentiaries have signed the present Convention in duplicate, and have thereunto affixed their seals.

Done at the city of Washington, the 19th day of March, Anno Domini one thousand eight hundred and seventy-four.

[SEAL.] HAMILTON FISH.
[SEAL.] MAURICE DELFOSSE.

Concluded June 13, 1882; *Ratifications exchanged at Washington November* 18, 1882; *Proclaimed November* 20, 1882.

The United States of America and his Majesty the King of the Belgians, having judged it expedient with a view to the better administration of justice and the prevention of crime within their respective territories and jurisdictions, that persons charged with or convicted of the crimes and offences hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have resolved to conclude a new Convention for that purpose, and have appointed, as their Plenipotentiaries: the President of the United States, Frederick T. Frelinghuysen, Secretary of State of the United States; and His Majesty the King of the Belgians, Mr. Théodore de Bounder de Melsbroeck, Commander of His Order of Leopold, etc., etc., His Envoy Extraordinary and Minister Plenipotentiary near the Government of the United States; who, after

having communicated to each other their respective full powers found in good and due form, have agreed upon and concluded the following articles:

ARTICLE I.

The Government of the United States and the Government of Belgium, mutually agree to deliver up persons who, having been charged, as principals or accessories, with or convicted of any of the crimes and offences specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum, or be found within the territories of the other: Provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial if the crime had been there committed.

ARTICLE II.

Persons shall be delivered up who shall have been convicted of or be charged, according to the provisions of this convention, with any of the following crimes:

1. Murder, comprehending the crimes designated in the Belgian penal code, by the terms of parricide, assassination, poisoning and infanticide.

2. The attempt to commit murder.

3. Rape, or attempt to commit rape. Bigamy. Abortion.

4. Arson.

5. Piracy or mutiny on shipboard whenever the crew, or part thereof, shall have taken possession of the vessel by fraud or by violence against the commander.

6. The crime of burglary, defined to be the act of breaking and entering by night into the house of another with the intent to commit felony; and the crime of robbery, defined to be the act of feloniously and forcibly taking from the person of another money or goods by violence or putting him in fear; and the corresponding crimes punished by the Belgian laws under the description of thefts committed in an inhabited house by night, and by breaking in by climbing or forcibly, and thefts committed with violence or by means of threats.

7. The crime of forgery, by which is understood the utterance of forged papers, and also the counterfeiting of public, sovereign or governmental acts.

8. The fabrication or circulation of counterfeit money, either coin or paper, or of counterfeit public bonds, coupons of the public debt, banknotes, obligations, or in general, anything being a title or instrument of credit; the counterfeiting of seals and dies, impressions, stamps and marks of state and public administrations, and the utterance thereof.

9. The embezzlement of public moneys committed within the jurisdiction of either party by public officers or depositaries.

10. Embezzlement by any person or persons, hired or salaried, to the detriment of their employers, when the crime is subject to punishment by the laws of the place where it was committed.

11. Willful and unlawful destruction or obstruction of railroads which endangers human life.

12. Reception of articles obtained by means of one of the crimes or offences provided for by the present convention.

Extradition may also be granted for the attempt to commit any of the crimes above enumerated when such attempt is punishable by the laws of both contracting parties.

ARTICLE III.

A person surrendered under this convention, shall not be tried or punished in the country to which his extradition has been granted, nor given up to a third power for a crime or offence, not provided for by the present convention and committed previously to his extradition, until he shall have been allowed one month to leave the country after having been discharged; and, if he shall have been tried and condemned to punishment, he shall be allowed one month after having suffered his penalty or having been pardoned.

He shall moreover not be tried or punished for any crime or offence provided for by this convention committed previous to his extradition, other than that which gave rise to the extradition, without the consent of the Government which surrendered him, which may, if it think proper, require the production of one of the documents mentioned in Article 7 of this convention.

The consent of that Government shall likewise be required for the extradition of the accused to a third country; nevertheless such consent shall not be necessary when the accused shall have asked of his own accord to be tried or to undergo his punishment, or when he shall not have left within the space of time above specified the territory of the country to which he has been surrendered.

ARTICLE IV.

The provisions of this convention shall not be applicable to persons guilty of any political crime or offence or of one connected with such a crime or offence. A person who has been surrendered on account of one of the common crimes or offences mentioned in Article II., shall consequently in no case be prosecuted and punished in the state to which his extradition has been granted on account of a political crime or offence committed by him previously to his extradition or on account of an act connected with such a political crime or offence, unless he has been at liberty to leave the country for one month after having been tried and, in case of condemnation, for one month after having suffered his punishment or having been pardoned.

An attempt against the life of the head of a foreign government, or against that of any member of his family when such attempt comprises the act either of murder or assassination, or of poisoning, shall not be considered a political offence or an act connected with such an offence.

ARTICLE V.

Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

ARTICLE VI.

If the person whose surrender may be claimed pursuant to the stipulations of the present treaty shall have been arrested for the commission of offences in the country where he has sought an asylum, or shall have been convicted thereof, his extradition may be deferred until he shall have been acquitted, or have served the term of imprisonment to which he may have been sentenced.

ARTICLE VII.

Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties, or, in the event of the absence of these from the country or its seat of government, they may be made by superior consular officers.

If the person whose extradition may be asked for shall have been convicted of a crime or offence, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal, and attestation of the official character of the judge by the proper executive authority, and of the latter by the minister or consul of the United States or of Belgium, respectively, shall accompany the requisition. When, however, the fugitive shall have been merely charged with crime, a duly authenticated copy of the warrant for his arrest in the country where the crime may have been committed, and of the depositions upon which such warrant may have been issued, must accompany the requisition as aforesaid.

The President of the United States, or the proper executive authority in Belgium, may then issue a warrant for the apprehension of the fugitive, in order that he may be brought before the proper judicial authority for examination. If it should then be decided that, according to the law and the evidence, the extradition is due pursuant to the treaty, the fugitive may be given up according to the forms prescribed in such cases.

ARTICLE VIII.

The expenses of the arrest, detention and transportation of the persons claimed shall be paid by the government in whose name the requisition has been made.

ARTICLE IX.

Extradition shall not be granted, in pursuance of the provisions of this convention, if legal proceedings or the enforcement of the penalty for the act committed by the person claimed, has become barred by limitation, according to the laws of the country to which the requisition is addressed.

ARTICLE X.

All articles found in the possession of the accused party and obtained through the commission of the act with which he is charged, or that may be used as evidence of the crime for which his extradition is demanded, shall be seized if the competent authority shall so order, and shall be surrendered with his person.

The rights of third parties to the articles so found shall nevertheless be respected.

ARTICLE XI.

The present convention shall take effect thirty days after the exchange of ratifications.

After it shall have taken effect, the convention of March 19, 1874, shall cease to be in force and shall be superseded by the present convention which shall continue to have binding force for six months after a desire for its termination shall have been expressed in due form by one of the two governments to the other.

It shall be ratified and its ratifications shall be exchanged at Washington as soon as possible.

In witness whereof, the respective Plenipotentiaries have signed the above articles, both in the English and French languages, and they have thereunto affixed their seals.

Done in duplicate, at the city of Washington, this thirteenth day of June, 1882.

[SEAL.] FREDK. T. FRELINGHUYSEN.

[SEAL.] THE. de BOUNDER de MELSBROECK.

BREMEN.

Concluded September 6, 1853; *Ratifications exchanged at Washington October* 14, 1853; *Proclaimed October* 15, 1853.

[Translation.]

Whereas a Convention for the mutual delivery of criminals fugitives from justice, in certain cases, between Prussia and other states of the Germanic Confederation, on the one part, and the United States of North America on the other part, was concluded at Washington, on the 16th June, 1852, by the Plenipotentiaries of the contracting parties, and was subsequently duly ratified on the part of the contracting governments; and whereas, pursuant to the second article of the said convention, the United States have agreed that the stipulations of said convention shall be applied to any other State of the Germanic Confederation which might subsequently declare its accession thereto: Therefore the Senate of the free Hanseatic city of Bremen accordingly hereby declares their accession to the said convention of the sixteenth June, 1852, which is literally as follows:

[A copy of the convention of the sixteenth of June, 1852, between the United States and Prussia and other Germanic States is here inserted:]

And hereby expressly promises that all and every one of the articles and provisions contained in the said convention shall be faithfully observed and executed within the dominion of the free Hanseatic city of Bremen.

In faith whereof the President of the Senate has executed the present declaration of accession, and has caused the great seal of Bremen to be affixed to the same.

Done at Bremen the sixth day of September, eighteen hundred and fifty-three.

The President of the Senate,

[SEAL.] SMIDT

BREUER,

Secretary.

DOMINICAN REPUBLIC.

Concluded February 8, 1867; *Ratification exchanged at Santo Domingo October* 5, 1867; *Proclaimed October* 24, 1867.

ARTICLE XXVII.

The United States of America and the Dominican Republic, on requisitions made in their name through the medium of their respective Diplomatic and Consular agents, shall deliver up to justice persons who, being charged with the crimes enumerated in the following article, committed within the jurisdiction of the requiring party, shall seek asylum, or shall be found within the territories of the other: *Provided*, That this shall be done only when the fact of the commission of the crime shall be so established as to justify their apprehension and commitment for trial, if the crime had been committed in the country where the persons so accused shall be found; in all of which the tribunals of said country shall proceed and decide according to their own laws.

ARTICLE XXVIII.

Persons shall be delivered up according to the provisions of this convention, who shall be charged with any of the following crimes, to wit: Murder, (including assassination, parricide, infanticide, and poisoning;) attempt to commit murder; rape; forgery; the counterfeiting of money; arson; robbery with violence, intimidation, or forcible entry of an inhabited house; piracy; embezzlement by public officers, or by persons hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment.

ARTICLE XXIX.

On the part of each country the surrender shall be made only by the authority of the Executive thereof. The expenses of detention and delivery, effected in virtue of the preceding articles, shall be at the cost of the party making the demand.

ARTICLE XXX.

The provisions of the foregoing articles relating to the surrender of fugitive criminals shall not apply to offences committed before the date hereof, nor to those of a political character.

ECUADOR.

Concluded June 28, 1872; *Ratifications exchanged at Quito November* 12, 1873; *Proclaimed December* 24, 1873.

The United States of America and the Republic of Equador having deemed it conducive to the better administration of justice and the prevention of crime within their respective territories, that all persons convicted of, or accused of the crimes enumerated below, being fugitives from justice, shall be, under certain circumstances reciprocally delivered up, have re-

solved to conclude a treaty upon the subject, and the President of the United States has for this purpose named Rumsey Wing, a citizen of the United States, and their Minister Resident in Ecuador, as Plenipotentiary on the part of the United States: and the President of Ecuador has named Francisco Tavier Leon, Minister of the Interior and of Foreign Affairs, as Plenipotentiary on the part of Ecuador; who having reciprocally communicated their full powers, and the same having been found in good and due form, have agreed upon the following articles, viz:

ARTICLE I.

The Government of the United States, and the Government of Ecuador mutually agree to deliver up such persons as may have been convicted of, or may be accused of the crimes set forth in the following article, committed within the jurisdiction of one of the contracting parties, and who may have sought refuge, or be found within the Territory of the other: it being understood that this is only to be done when the criminality shall be proved in such manner that according to the laws of the country, where the fugitive or accused may be found such persons might be lawfully arrested and tried, had the crime been committed within its jurisdiction.

ARTICLE II.

Persons convicted of or accused of any of the following crimes shall be delivered up, in accordance with the provisions of this Treaty.

1st. Murder, including assassination, parricide, infanticide and poisoning.

2nd. The crime of rape, arson, piracy, and mutiny on ship-board when the crew or a part thereof, by fraud or violence against the commanding officer have taken possession of the vessel.

3rd. The crime of burglary, this being understood as the act of breaking or forcing an entrance into another's house with intent to commit any crime, and the crime of robbery, this being defined as the act of taking from the person of another, goods or money with criminal intent, using violence or intimidations.

4th. The crime of forgery: which is understood to be the wilful use or circulation of forged papers or public documents.

5th. The fabrication or circulation of counterfeit money, either coin or paper, of public bonds, bank bills and securities, and in general of any kind of titles to or instruments of credit, the counterfeiting of stamps, dies, seals and marks of the State, and of the administrative authorities, and the sale or circulation thereof.

6th. Embezzlement of public property, committed within the jurisdiction of either party by public officers or depositaries.

ARTICLE III.

The stipulations of this treaty shall not be applicable to crimes or offences of a political character; and the person or persons delivered up charged with the crimes specified in the foregoing article shall not be prosecuted for any crime committed previously to that for which his or their extradition may be asked.

ARTICLE IV.

If the person whose extradition may have been applied for in accordance with the stipulations of the present treaty, shall have been arrested for offences committed in the country where he has sought refuge, or if he shall have been sentenced therefor, his extradition may be deferred until his acquittal, or the expiration of the term for which he shall have been sentenced.

ARTICLE V.

Requisitions for the extradition of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties, or in case of the absence of these from the country or its capital, they may be made by superior Consular officers. If the person whose extradition is asked for shall have been convicted of a crime, the requisition must be accompanied by a copy of the sentence of the Court that has convicted him, authenticated under its seal, and an attestation of the official character of the judge who has signed it, made by the proper executive authority; also by an authentication of the latter by the Minister or Consul of the United States or Equador respectively. On the contrary however, when the fugitive is merely charged with crime, a duly authenticated copy of the warrant for his arrest in the country where the crime has been committed, and of any evidence in writing upon which such warrant may have been issued, must accompany the aforesaid requisition. The President of the United States or the proper executive authority of Ecuador, may then order the arrest of the fugitive, in order that he may be brought before the judicial authority, which is competent to examine the question of extradition.

If, then, according to the evidence and the law, it be decided that the extradition is due in conformity with this treaty, the fugitive shall be delivered up, according to the forms prescribed in such cases.

ARTICLE VI.

The expenses of the arrest, detention and transportation of persons claimed, shall be paid by the Government in whose name the requisition shall have been made.

ARTICLE VII.

This treaty shall continue in force for ten years from the day of the exchange of ratifications, but in case neither party shall have given to the other one year's previous notice of its intention to terminate the same, then this treaty shall continue in force for ten years longer, and so on.

The present treaty shall be ratified, and the ratifications exchanged in the Capital of Ecuador, within two months from the day on which the session of the coming Congress of Ecuador shall terminate, which will be in October, 1873.

In testimony whereof the respective Plenipotentiaries have signed the present treaty in duplicate, and have hereunto affixed their seals.

Done in the city of Quito, Capital of the Republic of Ecuador, this twenty-eighth day of June one thousand eight hundred and seventy-two.

[SEAL.] RUMSEY WING.

[SEAL.] FRANCISCO TAVIER LEON.

FRANCE.

Concluded November 9, 1843; *Ratifications exchanged at Washington April* 12, 1844; *Proclaimed April* 13, 1844.

The United States of America and His Majesty the King of the French having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons charged with the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, the said United States of America and His Majesty the King of the French have named as their Plenipotentiaries to conclude a convention for this purpose:

That is to say, the President of the United States of America, Abel P. Upshur, Secretary of State of the United States, and His Majesty the King of the French, the Sieur Pageot, officer of the Royal Order of the Legion of Honor, his Minister Plenipotentiary, ad interim, in the United States of America;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

Article I.

It is agreed that the high contracting parties shall, on requisitions made in their name, through the medium of their respective diplomatic agents, deliver up to justice persons who, being accused of the crimes enumerated in the next following article, committed within the jurisdiction of the requiring party, shall seek an asylum, or shall be found within the territories of the other: *Provided*, That this shall be done only when the fact of the commission of the crime shall be so established as that the laws of the country in which the fugitive or the person so accused shall be found would justify his or her apprehension and committment for trial, if the crime had been there committed.

Article II.

Persons shall be so delivered up who shall be charged, according to the provisions of this convention, with any of the following crimes, to wit: Murder, (comprehending the crimes designated in the French penal code by the terms, assassination, parricide, infanticide and poisoning,) or with an attempt to commit murder, or with rape, or with forgery, or with arson, or with embezzlement by public officers, when the same is punishable with infamous punishment.

Article III.

On the part of the French Government, the surrender shall be made only by authority of the Keeper of the Seals, Minister of Justice; and on the part of the Government of the United States, the surrender shall be made only by authority of the Executive thereof.

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ARTICLE IV.

The expenses of any detention and delivery effected in virtue of the preceding provisions shall be borne and defrayed by the Government in whose name the requisition shall have been made.

ARTICLE V.

The provisions of the present convention shall not be applied in any manner to the crimes enumerated in the second article, committed anterior to the date thereof, nor to any crime or offence of a purely political character.

ARTICLE VI.

This convention shall continue in force until it shall be abrogated by the contracting parties, or one of them; but it shall not be abrogated, except by mutual consent, unless the party desiring to abrogate it shall give six months' previous notice of his intention to do so. It shall be ratified, and the ratifications shall be exchanged within the space of six months, or earlier if possible.

In witness whereof, the respective Plenipotentiaries have signed the present convention in duplicate, and have affixed thereto the seal of their arms.

Done at Washington the ninth day of November, anno Domini one thousand eight hundred and forty-three.

[SEAL.] A. P. UPSHUR.
[SEAL.] A. PAGEOT.

ADDITIONAL ARTICLE TO THE TREATY OF NOVEMBER 9, 1843.

Concluded February 24, 1845; *Ratifications exchanged at Paris June* 21, 1845; *Proclaimed July* 24, 1845.

The crime of robbery, defining the same to be the felonious and forcible taking from the person of another, of goods or money to any value, by violence, or putting him in fear; and the crime of burglary, defining the same to be, breaking and entering by night into a mansion-house of another, with intent to commit felony; and the corresponding crimes included under the French law in the words *vol qualifié crime*, not being embraced in the second article of the convention of extradition concluded between the United States of America and France, on the ninth of November, 1843, it is agreed by the present article, between the high contracting parties, that persons charged with those crimes shall be respectively delivered up, in conformity with the first article of the said convention; and the present article, when ratified by the parties, shall constitute a part of the said convention, and shall have the same force as if it had been originally inserted in the same.

In witness whereof, the respective Plenipotentiaries have signed the present article, in duplicate, and have affixed thereto the seal of their arms.

Done at Washington this twenty-fourth of February, 1845.

[SEAL.] J. C. CALHOUN.
[SEAL.] A. PAGEOT.

AN ADDITIONAL ARTICLE TO THE CONVENTIONS OF NOVEMBER 9, 1843, AND FEBRUARY 24, 1845.

Concluded February 10, 1858; *Ratifications exchanged at Washington February* 12, 1859; *Proclaimed February* 14, 1859.

It is agreed between the high contracting parties that the provisions of the treaties for the mutual extradition of criminals between the United States of America and France, of November 9th, 1843, and February 24th, 1845, and now in force between the two Governments, shall extend not only to persons charged with the crimes therein mentioned, but also to persons charged with the following crimes, whether as principals, accessories or accomplices, namely: Forging or knowingly passing or putting in circulation counterfeit coin or bank notes or other paper current as money, with intent to defraud any person or persons; embezzlement by any person or persons hired or salaried to the detriment of their employers, when these crimes are subject to infamous punishment.

In witness whereof the respective Plenipotentiaries have signed the present article in triplicate, and have affixed thereto the seal of their arms.

Done at Washington the tenth of February, 1858.

[SEAL.] LEW. CASS.

[SEAL.] SARTIGES.

GREAT BRITAIN.

Concluded November 19, 1794; *Ratification exchanged at London October* 28, 1795; *Proclaimed February* 29, 1796.

ARTICLE XXVII.

It is further agreed that His Majesty and the United States, on mutual requisitions, by them respectively, or by their respective Ministers or officers authorized to make the same, will deliver up to justice all persons who, being charged with murder or forgery, committed within the jurisdiction of either, shall seek an asylum within any of the countries of the other, provided that this shall only be done on such evidence of criminality as, according to the laws of the place, where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the offense had there been committed. The expence of such apprehension and delivery shall be borne and defrayed by those who make the requisition and receive the fugitive.

ARTICLE XXVIII.

It is agreed that the first ten articles of this treaty shall be permanent, and that the subsequent articles, except the twelfth, shall be limited in their duration to twelve years, to be computed from the day on which the ratifications of this treaty shall be exchanged.*

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* The ratifications were exchanged October 28, 1795, and the 27th article expired in 1807.

Concluded August 9, 1842; *Ratifications exchanged at London October* 13, 1842; *proclaimed November* 10, 1842.

ARTICLE X.

It is agreed that the United States and Her Britannic Majesty shall, upon mutual requisitions by them, or their Ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum or shall be found within the territories of the other: Provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offense had there been committed; and the respective judges and other magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

ARTICLE XI.

* * * * * * *

The tenth article shall continue in force until one or the other of the parties shall signify its wish to terminate it, and no longer.

HANOVER.*

Concluded January 18, 1855; *Ratifications exchanged at London April* 17, 1855; *Proclaimed May* 5, 1855.

The United States of America and His Majesty the King of Hanover, actuated by an equal desire to further the administration of justice, and to prevent the commission of crimes in their respective countries, taking into consideration that the increased means of communication between Europe and America facilitate the escape of offenders, and that consequently provision ought to be made in order that the ends of justice shall not be defeated, have determined to conclude an arrangement destined to regulate the course to be observed in all cases with reference to the extradition of such individuals as, having committed any of the offenses here-

* Terminated by absorption of Hanover by Prussia.

after enumerated in one country, shall have taken refuge within the territories of the other. The constitution and laws of Hanover, however, not allowing the Hanoverian Government to surrender their own subjects for trial before a foreign court of justice, a strict reciprocity requires that the Government of the United States shall be held equally free from any obligation to surrender citizens of the United States. For which purposes the high contracting Powers have appointed as their Plenipotentiaries:

The President of the United States, James Buchanan, Envoy Extraordinary and Minister Plenipotentiary of the United States at the Court of the United Kingdom of Great Britain and Ireland; His Majesty the King of Hanover, the Count Adolphus von Kielmansegge, his Envoy Extraordinary and Minister Plenipotentiary to Her Britannic Majesty, Grand Cross of the Order of the Guelphs, &c., &c.;

Who, after reciprocal communication of their respective full powers, found in good and due form, have agreed to the following articles:

ARTICLE I

The Government of the United States and the Hanoverian Government promise and engage, upon mutual requisitions by them, or their Ministers, officers, or authorities respectively made, to deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged papers, or the fabrication or circulation of counterfeit money, whether coin or paper money, or the embezzlement of public moneys, committed within the jurisdiction of either party, shall seek an asylum, or shall be found within the territories of the other; provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had there been committed; and the respective judges and other magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive.

The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

ARTICLE II.

The stipulations of this convention shall be applied to any other State of the Germanic Confederation which may hereafter declare its accession thereto.

ARTICLE III.

None of the contracting parties shall be bound to deliver up its own subjects or citizens under the stipulations of this convention.

ARTICLE IV.

Whenever any person accused of any of the crimes enumerated in this convention shall have committed a new crime in the territories of the State where he has sought an asylum, or shall be found, such person shall not be delivered up, under the stipulations of this convention, until he shall have been tried and shall have received the punishment due to such new crime, or shall have been acquitted thereof.

ARTICLE V.

The present convention shall continue in force until the first of January, one thousand eight hundred and fifty-eight; and if neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the high contracting parties shall have given notice to the other of such intention, each of the high contracting parties reserving to itself the right of giving such notice to the other at any time after the expiration of the said first day of January, one thousand eight hundred and fifty-eight.

ARTICLE VI.

The present convention shall be ratified by the President, by and with the advice and consent of the Senate of the United States, and by the Government of Hanover, and the ratifications shall be exchanged in London within three months from the date hereof, or sooner if possible.

In faith whereof the respective Plenipotentiaries have signed this convention, and have hereunto affixed their seals.

Done in duplicate in London, the eighteenth day of January, one thousand eight hundred and fifty-five, and the seventy-ninth year of the independence of the United States.

[SEAL.] JAMES BUCHANAN.
[SEAL.] A. KIELMANSEGGE.

HAWAIIAN ISLANDS.

Concluded December 20, 1849; *Ratifications exchanged at Honolulu, August* 24, 1850; *proclaimed November* 9, 1850.

ARTICLE XIV.

The contracting parties mutually agree to surrender, upon official requisition, to the authorities of each, all persons who, being charged with the crimes of murder, piracy, arson, robbery, forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall be found within the territories of the other; provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the person so charged shall be found, would justify his apprehension and com-

mitment for trial, if the crime had there been committed. And the respective judges and other magistrates of the two Governments shall have authority, upon complaint made under oath, to issue a warrant for the apprehension of the person so charged, that he may be brought before such judges or other magistrates respectively, to the end that the evidence of criminality may be heard and considered: and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

HAYTI.

Concluded November 3, 1864; *Ratifications exchanged at Washington May* 22, 1865; *proclaimed July* 6, 1865.

Article XXXVIII.

It is agreed that the high contracting parties shall, on requisitions made in their name, through the medium of their respective diplomatic agents, deliver up to justice persons who, being charged with the crimes enumerated in the following article, committed within the jurisdiction of the requiring party, shall seek an asylum or shall be found within the territories of the other: *Provided*, That this shall be done only when the fact of the commission of the crime shall be so established as to justify their apprehension and commitment for trial, if the crime had been committed in the country where the persons so accused shall be found; in all of which the tribunals of said country shall proceed and decide according to their own laws.

Article XXXIX.

Persons shall be delivered up, according to the provisions of this treaty, who shall be charged with any of the following crimes, to wit: murder, (including assassination, parricide, infanticide, and poisoning,) attempt to commit murder, piracy, rape, forgery, the counterfeiting of money, the utterance of forged paper, arson, robbery, and embezzlement by public officers, or by persons hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment.

Article XL.

The surrender shall be made, on the part of each country, only by the authority of the Executive thereof. The expenses of the detention and delivery, effected in virtue of the preceding articles, shall be at the cost of the party making the demand.

ARTICLE XLI.

The provisions of the foregoing articles relating to the extradition of fugitive criminals shall not apply to offences committed before the date hereof, nor to those of a political character. Neither of the contracting parties shall be bound to deliver up its own citizens under the provisions of this treaty.

ITALY.

Concluded March 23, 1868; *Ratifications exchanged at Washington September* 17, 1868; *proclaimed September* 30, 1868.

The United States of America and His Majesty the King of Italy, having judged it expedient, with a view to the better administration of justice, and to the prevention of crimes within their respective territories and jurisdiction, that persons convicted of or charged with the crimes hereinafter specified, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have resolved to conclude a convention for that purpose, and have appointed as their Plenipotentiaries:

The President of the United States, William H. Seward, Secretary of State; His Majesty the King of Italy, the Commander Marcello Cerruti, Envoy Extraordinary and Minister Plenipotentiary;

Who, after reciprocal communication of their full powers, found in good and due form, have agreed upon the following articles, to wit:

ARTICLE I.

The Government of the United States and the Government of Italy mutually agree to deliver up persons who, having been convicted of or charged with the crimes specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other: Provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial, if the crime had been there committed.

ARTICLE II.

Persons shall be delivered up who shall have been convicted of, or be charged, according to the provisions of this convention, with any of the following crimes.

1. Murder, comprehending the crimes designated in the Italian penal code by the terms of parricide, assassination, poisoning, and infanticide.

2. The attempt to commit murder.

3. The crimes of rape, arson, piracy, and mutiny on board a ship, whenever the crew, or part thereof, by fraud or violence against the commander, have taken possession of the vessel.

4. The crime of burglary, defined to be the action of breaking and entering by night into the house of another with the intent to commit felony; and the crime of robbery, defined to be the action of feloniously and forcibly taking from the person of another goods or money, by violence or putting him in fear.

5. The crime of forgery, by which is understood the utterance of forged papers, the counterfeiting of public, sovereign, or Government acts.

6. The fabrication or circulation of counterfeit money, either coin or paper, of public bonds, bank-notes, and obligations, and in general of any title and instrument of credit whatsoever, the counterfeiting of seals, dies, stamps, and marks of State and public administrations, and the utterance thereof.

7. The embezzlement of public moneys, committed within the jurisdiction of either party, by public officers or depositors.

8. Embezzlement by any person or persons hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment.

ARTICLE III.

The provisions of this treaty shall not apply to any crime or offence of a political character, and the person or persons delivered up for the crimes enumerated in the preceding article shall in no case be tried for any ordinary crime, committed previously to that for which his or their surrender is asked.

ARTICLE IV.

If the person whose surrender may be claimed, pursuant to the stipulations of the present treaty, shall have been arrested for the commission of offences in the country where he has sought an asylum, or shall have been convicted thereof, his extradition may be deferred until he shall have been acquitted, or have served the term of imprisonment to which he may have been sentenced.

ARTICLE V.

Requisitions for the surrender of fugitives from justice shall be made by the respective Diplomatic Agents of the contracting parties, or in the event of the absence of these from the country or its seat of Government, they may be made by superior consular officers. If the person whose extradition may be asked for shall have been convicted of a crime, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal, and an attestation of the official character of the judge by the proper executive authority, and of the latter by the Minister or Consul of the United States or of Italy, respectively, shall accompany the requisition. When, however, the fugitive shall have been merely charged with crime, a duly authenticated copy of the warrant for his arrest in the country where the crime may have been committed, or of the depositions upon which such warrant may have been issued, must accompany the requisition as afore-

said. The President of the United States, or the proper executive authority in Italy, may then issue a warrant for the apprehension of the fugitive, in order that he may be brought before the proper judicial authority for examination. If it should then be decided that, according to law and the evidence, the extradition is due pursuant to the treaty, the fugitive may be given up according to the forms prescribed in such cases.

ARTICLE VI.

The expenses of the arrest, detention, and transportation of the persons claimed, shall be paid by the Government in whose name the requisition shall have been made.

ARTICLE VII.

This convention shall continue in force during five (5) years from the day of exchange of ratifications; but if neither party shall have given to the other six (6) months' previous notice of its intention to terminate the same, the convention shall remain in force five years longer, and so on.

The present convention shall be ratified, and the ratifications exchanged at Washington, within six (6) months, and sooner if possible.

In witness whereof, the respective Plenipotentiaries have signed the present convention in duplicate, and have thereunto affixed their seals.

Done at Washington the twenty-third day of March, A. D. one thousand eight hundred and sixty-eight, and of the Independence of the United States the ninety-second.

[SEAL.] WILLIAM H. SEWARD.
[SEAL.] M. CERRUTI.

CONVENTION FOR THE EXTRADITION OF CRIMINALS FUGITIVE FROM JUSTICE, BEING ADDITIONAL ARTICLE TO THE CONVENTION OF MARCH 23, 1868.

Concluded January 21, 1869; *Ratifications exchanged at Washington May* 7, 1869; *proclaimed May* 11, 1869.

It is agreed that the concluding paragraph of the second article of the convention aforesaid shall be so amended as to read as follows:

8. Embezlement by any person or persons hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment according to the laws of the United States, and criminal punishment according to the laws of Italy.

In witness whereof, the respective Plenipotentiaries have signed the present article in duplicate, and have affixed thereto the seal of their arms.

Done at Washington the 21st day of January, 1869.

[SEAL.] WILLIAM H. SEWARD.
[SEAL.] M. CERRUTI.

SUPPLEMENTARY CONVENTION TO THE CONVENTION OF MARCH 23, 1868.

Concluded June 11, 1884; *Ratifications exchanged at Washington April* 24, 1885; *proclaimed April* 24, 1885.

The President of the United States of America and His Majesty the King of Italy, being convinced of the necessity of adding some stipulations to the extradition convention concluded between the United States and Italy on the 23d of March, 1868, with a view to the better administration of justice and the prevention of crime in their respective territories and jurisdictions, have resolved to conclude a supplementary convention for this purpose, and have appointed as their Plenipotentiaries, to-wit: The President of the United States, Frederick T. Frelinghuysen, Secretary of State of the United States;

And His Majesty the King of Italy, Baron Saverio Fava, His Envoy Extraordinary and Minister Plenipotentiary at Washington;

Who, after reciprocal communication of their full powers, which were found to be in good and due form, have agreed upon the following articles:

ARTICLE I.

The following paragraph is added to the list of crimes on account of which extradition may be granted, as provided in Article II. of the aforesaid convention of March 23, 1868:

9. Kidnapping of minors or adults, that is to say, the detention of one or more persons for the purpose of extorting money from them or their families, or for any other unlawful purpose.

ARTICLE II.

The following clause shall be inserted after Article V. of the aforesaid Convention of March 23, 1868:

Any competent judicial magistrate of either of the two countries shall be authorized after the exhibition of a certificate signed by the Minister of Foreign Affairs [of Italy] or the Secretary of State [of the United States] attesting that a requisition has been made by the Government of the other country to secure the preliminary arrest of a person condemned for or charged with having therein committed a crime for which, pursuant to this Convention, extradition may be granted, and on complaint duly made under oath by a person cognizant of the fact, or by a diplomatic or consular officer of the demanding Government, being duly authorized by the latter, and attesting that the aforesaid crime was thus perpetrated, to issue a warrant for the arrest of the person thus inculpated, to the end that he or she may be brought before the said magistrate, so that the evidence of his or her criminality may be heard and considered; and the person thus accused and imprisoned shall from time to time be remanded to prison until a formal demand for his or her extradition shall be made and supported by evidence as above provided; if, however, the requisition, together with the documents above provided for, shall not be made, as required, by the diplomatic representative of the demanding Government, or, in his absence, by a consular officer thereof, within forty days from the date of the arrest of the accused, the prisoner shall be set at liberty.

ARTICLE III.

These supplementary articles shall be considered as an integral part of the aforesaid original extradition convention of March 23, 1868, and together with the additional article of January 21, 1869, as having the same value and force as the Convention itself, and as destined to continue and terminate in the same manner.

The present Convention shall be ratified, and the ratifications exchanged at Washington as speedily as possible, and it shall take effect immediately after the said exchange of ratifications.

In testimony whereof, the respective Plenipotentiaries have signed the present Convention in duplicate, and have thereunto affixed their seals.

Done at Washington, this eleventh day of the month of June in the the year of our Lord one thousand eight hundred and eighty four.

[SEAL.] FREDK. T. FRELINGHUYSEN.
[SEAL.] FAVA.

JAPAN.

Concluded April 29, 1886; *Ratifications exchanged at Tokio September 27,* 1886; *proclaimed November 3,* 1886.

The President of the United States of America and his Majesty the Emperor of Japan having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within the two countries and their jurisdictions, that persons charged with or convicted of the crimes or offences hereinafter named and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, they have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

The President of the United States of America, Richard B. Hubbard, their Envoy Extraordinary and Minister Plenipotentiary near His Imperial Majesty, and His Majesty the Emperor of Japan Count Inouye Kaoru, Jinsammi, His Imperial Majesty's Minister of State for Foreign Affairs, First Class of the Order of the Rising Sun &c. &c. &c. who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

ARTICLE I.

The High Contracting Parties engage to deliver up to each other, under the circumstances and conditions stated in the present Treaty, all persons, who being accused or convicted of one of the crimes or offences named below in Article II, and committed within the jurisdiction of the one Party, shall be found within the jurisdiction of the other Party.

ARTICLE II.

1. Murder, and assault with intent to commit murder.
2. Counterfeiting or altering money, or uttering or bringing into circula-

tion counterfeit or altered money; counterfeiting certificates or coupons of public indebtedness, bank notes, or other instruments of public credit of either of the parties, and the utterance or circulation of the same.

3. Forgery or altering, and uttering what is forged or altered.

4. Embezzlement or criminal malversation of the public funds, committed within the jurisdiction of either party, by public officers or depositaries.

5. Robbery.

6. Burglary, defined to be the breaking and entering by night time into the house of another person with the intent to commit a felony therein; and the act of breaking and entering the house of another, whether in the day or night-time, with the intent to commit a felony therein.

7. The act of entering, or of breaking and entering, the offices of the Government and public authorities, or the offices of banks, banking-houses, savings-banks, trust companies, insurance or other companies, with the intent to commit a felony therein.

8. Perjury, or the subornation of perjury.

9. Rape.

10. Arson.

11. Piracy by the law of nations.

12. Murder, assault with intent to kill, and manslaughter, committed on the high seas, on board a ship bearing the flag of the demanding country

13. Malicious destruction of, or attempt to destroy, railways, trains, vessels, bridges, dwellings, public edifices, or other buildings, when the act endangers human life.

ARTICLE III.

If the person demanded be held for trial in the country on which the demand is made, it shall be optional with the latter to grant extradition or to proceed with the trial: Provided that, unless the trial shall be for the crime for which the fugitive is claimed, the delay shall not prevent ultimate extradition.

ARTICLE IV.

If it be made to appear that extradition is sought with a view to try or punish the person demanded for an offense of a political character, surrender shall not take place; nor shall any person surrendered be tried or punished for any political offense committed previously to his extradition, or for any offense other than that in respect of which the extradition is granted.

ARTICLE V

The requisition for extradition shall be made through the diplomatic agents of the contracting parties, or, in the event of the absence of these from the country or its seat of government, by superior consular officers.

If the person whose extradition is requested shall have been convicted of a crime, a copy of the sentence of the court in which he was convicted, authenticated under its seal, and an attestation of the official character of the judge by the proper executive authority, and of the latter by the Minister or Consul of the United States or of Japan, as the case may be, shall

accompany the requisition. When the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country making the demand and of the depositions on which such warrant may have been issued, must accompany the requisition.

The fugitive shall be surrendered only on such evidence of criminality as according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime had been there committed.

ARTICLE VI.

On being informed by telegraph or other written communication through the diplomatic channel, that a lawful warrant has been issued by competent authority upon probable cause for the arrest of a fugitive criminal charged with any of the crimes enumerated in Article II of this Treaty, and, on being assured from the same source that a request for the surrender of such criminal is about to be made in accordance with the provisions of this Treaty, each Government will endeavor to procure so far as it lawfully may the provisional arrest of such criminal, and keep him in safe custody for a reasonable time, not exceeding two months, to await the production of the documents upon which the claim for extradition is founded.

ARTICLE VII.

Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention, but they shall have the power to deliver them up if in their discretion it be deemed proper to do so.

ARTICLE VIII.

The expenses of the arrest, detention, examination and transportation of the accused shall be paid by the Government which has requested the extradition.

ARTICLE IX.

The present treaty shall come into force sixty days after the exchange of the ratifications thereof. It may be terminated by either of them, but shall remain in force for six months after notice has been given of its termination.

The treaty shall be ratified, and the ratifications shall be exchanged at Washington, as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the present Treaty in duplicate and have thereunto affixed their seals.

Done at the city of Tokio, the Twenty-ninth day of April, in the eighteen hundred and eighty-sixth* year of the christian era, corresponding to the Twenty-ninth day of the Fourth month, of the nineteenth year of Meiji.

[SEAL.] RICHARD B. HUBBARD.

[SEAL.] INOUYE KAORU.

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* In the protocol of exchange of the ratifications of this treaty, signed by the Plenipotentiaries at Tokio, September 27, 1886, it is declared that "the

LUXEMBURG.

Concluded October 29, 1883; *Ratifications exchanged at Berlin July* 14, 1884; *proclaimed August* 12, 1884.

The United States of America and His Majesty the King of the Netherlands, Grand Duke of Luxemburg, having judged it expedient, with a view to the better administration of justice and the prevention of crime within their respective territories and jurisdictions, that persons charged with or convicted of the crimes and offenses hereinafter enumerated, and being fugitives from justice, should, under certain circumstances be reciprocally delivered up, have resolved to conclude a convention for that purpose and have appointed as their Plenipotentiaries:

The President of the United States of America, Mr. A. A. Sargent, His Envoy Extraordinary and Minister Plenipotentiary to His Majesty the Emperor of Germany at Berlin; and His Majesty the King of the Netherlands, Grand Duke of Luxemburg, Dr. Paul Eyschen, His Director general of the Department of justice and Chargé d'Affaires of the Grand Duchy of Luxemburg at Berlin, Chevalier of the 2nd Class of the Order of the Golden Lion of the House of Nassau, Commander of the Order of the Crown of Oak and of that of the Lion of the Netherlands, &c, &c, &c.

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

Article I.

The Government of the United States and the Government of Luxemburg mutually agree to deliver up persons who, having been charged as principals or accessories, with or convicted of any of the crimes and offenses specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other. Provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or the person so charged shall be found, would justify his or her apprehension and commitment for trial if the crime had been there committed.

Article II.

Persons shall be delivered up who shall have been convicted of or be charged, according to the provisions of the convention, with any of the following crimes:

1. Murder, comprehending the crimes designated in the penal code of Luxemburg by the terms of parricide, assassination, poisoning and infanticide;

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eighteen hundred and eighty-sixth year of the christian era," is intended to mean the year A. D. 1886. The protocol also declares that notwithstanding the treaty provided that the exchange of the ratifications should take place at Washington, the Two High Contracting Parties, in order to save time, agreed that the exchange should take place at Tokio instead.

2°. The attempt to commit murder;

3°. Rape, or attempt to commit rape, bigamy, abortion;

4°. Arson;

5°. Piracy or mutiny on shipboard whenever the crew or part thereof shall have taken possession of the vessel by fraud or violence against the commander;

6°. The crime of burglary defined to be the act of breaking and entering by night into the house of another with the intent to commit felony; and the crime of robbery, defined to be the act of feloniously and forcibly taking from the person of another money or goods by violence or putting him in fear; and the corresponding crimes punished by the laws of Luxemburg under the description of thefts committed in an inhabited house by night and by breaking in, by climbing or forcibly; and thefts committed with violence or by means of threats.

7° The crime of forgery by which is understood the utterance of forged papers, and also the counterfeiting of public, sovereign or governmental acts;

8°. The fabrication or circulation of counterfeit money, either coin or paper, or of counterfeit public bonds, coupons of the public debt, bank-notes, obligations, or, in general, anything being a title or instrument of credit; the counterfeiting of seals and dies, impressions, stamps, and marks of State and public administrations and the utterance thereof;

9°. The embezzlement of public moneys committed within the jurisdiction of either party by public officers or depositaries;

10°. Embezzlement by any person or persons hired or salaried to the detriment of their employers, when the crime is subject to punishment by the laws of the place where it was committed;

11°. Wilful and unlawful destruction or obstruction of rail-roads which endangers human life;

12°. Reception of articles obtained by means of one of the crimes or offenses provided for by the present convention.

Extradition may also be granted for the attempt to commit any of the crimes above enumerated, when such attempt is punishable by the laws of both contracting parties.

Article III.

A person surrendered under this convention shall not be tried or punished in the country to which his extradition has been granted, nor given up to a third power for a crime or offense not provided for by the present convention and committed previously to his extradition, until he shall have been allowed one month to leave the country after having been discharged; and, if he shall have been tried and condemned to punishment, he shall be allowed one month after having suffered his penalty or having been pardoned.

He may however be tried or punished for any crime or offense provided for by this convention committed previous to his extradition, other than that which gave rise to the extradition, and notice of the purpose to so try him, with specifications of the offense charged, shall be given to the Government which surrendered him, which may, if it think proper, require the

production of one of the documents mentioned in article 7 of this convention.

The consent of that government shall be required for the extradition of the accused to a third country; nevertheless such consent shall not be necessary when the accused shall have asked of his own accord to be tried or to undergo his punishment, or when he shall not have left within the space of time above specified the territory of the country to which he has been surrendered.

ARTICLE IV.

The provisions of this convention shall not be applicable to persons guilty of any political crime or offense or of one connected with such a crime or offense. A person who has been surrendered on account of one of the common crimes or offenses mentioned in article 2, shall consequently in no case be prosecuted and punished in the State to which his extradition has been granted on account of a political crime or offense committed by him previously to his extradition or on account of an act connected with such a political crime or offense, unless he has been at liberty to leave the country for one month after having been tried, and, in case of condemnation, for one month after having suffered his punishment or having been pardoned.

An attempt against the life of the head of a foreign government or against that of any member of his family, when such attempt comprises the act either of murder or assassination or of poisoning, shall not be considered a political offense or an act connected with such an offense.

ARTICLE V.

Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

ARTICLE VI.

If the person whose surrender may be claimed pursuant to the stipulations of the present treaty shall have been arrested for the commission of offenses in the country where he has sought an asylum, or shall have been convicted thereof, his extradition may be deferred until he shall have been acquitted, or have served the term of imprisonment to which he may have been sentenced.

ARTICLE VII.

Requisitions of the surrender of fugitives from justice shall always be made through a diplomatic channel.

If the person whose extradition may be asked for shall have been convicted of a crime or offense, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal and attestation of the official character of the judge by the proper executive authority; and of the latter by the minister or consul of the United States or by the minister or consul charged with the interests of Luxemburg, respectively, shall accompany the requisition. When, however, the fugitive shall have

been merely charged with crime, a duly authenticated copy of the warrant for his arrest in the country where the crime may have been committed, and the depositions upon which such warrant may have been issued, must accompany the requistion as aforesaid. The President of the United States or the proper authority in Luxemburg may then issue a warrant for the apprehension of the fugitive, in order that he may be brought before the proper judicial authority for examination. If it should then be decided that, according to the law and the evidence, the extradition is due pursuant to the treaty, the fugitive may be given up according to the forms prescribed in such cases.

ARTICLE VIII.

The expenses of the arrest, detention and transportation of the persons claimed shall be paid by the government in whose name the requisition has been made.

ARTICLE IX.

Extradition shall not be granted in pursuance of the provisions of this convention, if legal proceedings or the enforcement of the penalty for the act committed by the person claimed, has become barred by limitation, according to the laws of the country to which the requisition is addressed.

ARTICLE X.

All articles found in the possession of the accused party and obtained through the commission of the act with which he is charged, or that may be used as evidence of the crime for which his extradition is demanded, shall be seized if the competent authority shall so order, and shall be surrendered with his person.

The rights of third parties to the articles so found shall nevertheless be respected.

ARTICLE XI.

The present convention shall take effect thirty days after the exchange of ratifications.

It may be terminated by either of the contracting parties, but shall remain in force for six months after notice has been given for its termination.

It shall be ratified and its ratifications shall be exchanged as soon as possible.

In witness whereof the respective plenipotentiaries have signed the above articles both in the English and French languages, and they have thereunto affixed their seals.

Done, in duplicate, at the city of Berlin, this 29th day of October, A. D. 1883.

[SEAL.] A. A. SARGENT.

[SEAL.] PAUL EYSCHEN.

MECKLENBURG-SCHWERIN.

DECLARATION OF ACCESSION TO THE CONVENTION FOR THE EXTRADITION OF CRIMINALS, FUGITIVES FROM JUSTICE, OF JUNE 16, 1852, BETWEEN THE UNITED STATES AND PRUSSIA AND OTHER STATES OF THE GERMANIC CONFEDERATION, AND TO ADDITIONAL ARTICLE THERETO OF NOVEMBER 16, 1852.

Dated November 26, 1853; *proclaimed January* 6, 1854.

[Translation.]

Whereas a treaty for the reciprocal extradition of fugitive criminals in special cases, was concluded between Prussia and other States of the Germanic Confederation on the one hand, and the United States of North America on the other, under date of June 16th, 1852, at Washington, by the Plenipotentiaries of the contracting parties, and has been ratified by the contracting Governments; and whereas, in the second article of the same, the United States of North America have declared that they agree that the stipulations of the aforesaid treaty shall be applicable to every other State of the Germanic Confederation which shall have subsequently declared its accession to the treaty: Now, therefore, in accordance therewith, the Government of His Royal Highness the Grand Duke of Mecklenburg-Schwerin hereby declares, through the undersigned Grand Ducal Minister of Foreign Affairs, its accession to the aforesaid treaty of June 16th, 1852, which is, word for word, as follows:

[The original declaration here includes a copy, in German and English, of the treaty of June 16, 1852, and of the additional article thereto of November 16, 1852.]

and hereby expressly gives assurance that each and every article and stipulation of this treaty shall be faithfully observed and enforced within the territory of the Grand Duchy of Mecklenburg-Schwerin.

In testimony whereof the Grand Ducal Minister of Foreign Affairs, in the name of His Royal Highness the Grand Duke of Mecklenburg-Schwerin, has executed this declaration of accession, and caused the Ministerial seal to be thereunto affixed.

Done at Schwerin, November 26th, 1853.

[SEAL.] GR. V. BULOW,

Grand Ducal Minister of Foreign Affairs of Mecklenburg-Schwerin.

MECKLENBURG-STRELITZ.

DECLARATION OF ACCESSION TO THE CONVENTION FOR THE EXTRADITION OF CRIMINALS, FUGITIVE FROM JUSTICE, OF JUNE 16, 1852, BETWEEN THE UNITED STATES AND PRUSSIA AND OTHER STATES OF THE GERMANIC CONFEDERATION.

Dated December 2, 1853; *proclaimed January* 26, 1854.

[Translation.]

Whereas a treaty for the reciprocal extradition of fugitive criminals, in special cases, was concluded between Prussia and other States of the Germanic Confederation on the one hand, and the United States of North America on the other, under date of June 16th, 1852, at Washington, by the Plenipotentiaries of the contracting parties, and has been ratified by the contracting Governments; and whereas, in the second article of the same, the United States of North America have declared that they agree that the stipulations of the aforesaid treaty shall be applicable to every other State of the Germanic Confederation which shall have subsequently declared its accession to the treaty: Now, therefore, in accordance therewith, the Government of His Royal Highness the Grand Duke of Mecklenburg-Strelitz, hereby declares its accession to the aforesaid treaty of June 16th, 1852, which is, word for word, as follows:

[The original declaration here includes a copy, in German, of the treaty of June 16, 1852.]

and hereby expressly gives assurance that each and every article and stipulation of this treaty shall be faithfully observed and enforced within the territory of the Grand Duchy of Mecklenburg-Strelitz.

In testimony whereof the undersigned Grand Ducal Minister of State, in the name of His Royal Highness the Grand Duke of Mecklenburg-Strelitz, has executed this declaration of accession, and caused the seal of the Grand Ducal Ministry of State to be thereunto affixed.

Done at Neustrelitz, the 2d day of December, 1853.

[SEAL.]

P. V. KANDORFF,
Grand Ducal Minister of State.
DRISCHOW.

MEXICO.

Concluded December 11, 1861; *ratifications exchanged at Mexico May* 20, 1862; *proclaimed June* 20, 1862.

The United States of America and the United Mexican States, having judged it expedient, with a view to the better administration of justice and to the prevention of crime within their respective territories and jurisdictions, that persons charged with the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have resolved to conclude a treaty for this pur-

pose, and have named as their respective Plenipotentiaries, that is to say:

The President of the United States has appointed Thomas Corwin, a citizen of the United States, and their Envoy Extraordinary and Minister Plenipotentiary near the Mexican Government; and the President of the United Mexican States has appointed Sebastian Lerdo de Tejada, a citizen of the said States, and a Deputy of the Congress of the Union;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

ARTICLE I.

It is agreed that the contracting parties shall, on requisitions made in their name, through the medium of their respective diplomatic agents, deliver up to justice persons who, being accused of the crimes enumerated in article third of the present treaty, committed within the jurisdiction of the requiring party, shall seek an asylum, or shall be found within the territories of the other: *Provided*, That this shall be done only when the fact of the commission of the crime shall be so established as that the laws of the country in which the fugitive or the person so accused shall be found, would justify his or her apprehension and commitment for trial if the crime had been there committed.

ARTICLE II.

In the case of crimes committed in the frontier States or Territories of the two contracting parties, requisitions may be made through their respective diplomatic agents, or throug[h] the chief civil authority of said States or Territories, or through such chief civil or judicial authority of the districts or counties bordering on the frontier as may for this purpose be duly authorized by the said chief civil authority of the said frontier States or Territories, or when, from any cause, the civil authority of such State or Territory shall be suspended, through the chief military officer in command of such State or Territory.

ARTICLE III.

Persons shall be so delivered up who shall be charged, according to the provisions of this treaty, with any of the following crimes, whether as principals, accessories, or accomplices, to wit: Murder, (including assassination, parricide, infanticide, and poisoning;) assault with intent to commit murder; mutilation; piracy; arson; rape; kidnapping, defining the same to be the taking and carrying away of a free person by force or deception; forgery, including the forging or making, or knowingly passing or putting in circulation counterfeit coin or bank notes, or other paper current as money, with intent to defraud any person or persons; the introduction or making of instruments for the fabrication of counterfeit coin or bank notes, or other paper current as money; embezzlement of public moneys; robbery, defining the same to be the felonious and forcible taking from the person of another of goods or money to any value, by violence or putting him in fear; burglary, defining the same to be breaking and entering into

the house of another with intent to commit felony; and the crime of larceny of cattle, or other goods and chattels, of the value of twenty-five dollars or more, when the same is committed within the frontier States or Territories of the contracting parties.

ARTICLE IV.

On the part of each country the surrender of fugitives from justice shall be made only by the authority of the Executive thereof, except in the case of crimes committed within the limits of the frontier States and Territories, in which latter case the surrender may be made by the chief civil authority thereof, or such chief civil or judicial authority of the districts or counties bordering on the frontier as may for this purpose be duly authorized by the said chief civil authority of the said frontier States or Territories, or if, from any cause, the civil authority of such State or Territory shall be suspended, then such surrender may be made by the chief military officer in command of such State or Territory.

ARTICLE V.

All expenses whatever of detention and delivery effected in virtue of the preceding provisions shall be borne and defrayed by the Government or authority of the frontier State or Territory in whose name the requisition shall have been made.

ARTICLE VI.

The provisions of the present treaty shall not be applied in any manner to any crime or offence of a purely political character, nor shall it embrace the return of fugitive slaves, nor the delivery of criminals who, when the offence was committed, shall have been held in the place where the offence was committed in the condition of slaves, the same being expressly forbidden by the Constitution of Mexico; nor shall the provisions of the present treaty be applied in any manner to the crimes enumerated in the third article committed anterior to the date of the exchange of the ratifications hereof.

Neither of the contracting parties shall be bound to deliver up its own citizens under the stipulations of this treaty.

ARTICLE VII.

This treaty shall continue in force until it shall be abrogated by the contracting parties, or one of them; but it shall not be abrogated except by mutual consent, unless the party desiring to abrogate it shall give twelve months' previous notice.

ARTICLE VIII.

The present treaty shall be ratified in conformity with the Constitutions of the two countries, and the ratifications shall be exchanged at the city of Mexico within six months from the date hereof, or earlier if possible.

In witness whereof we, the Plenipotentiaries of the United States of America and of the United Mexican States, have signed and sealed these presents.

Done in the city of Mexico on the eleventh day of December, in the year of our Lord one thousand eight hundred and sixty-one, the eighty-sixth of the Independence of the United States of America, and the forty-first of that of the United Mexican States.

[SEAL.] THOS. CORWIN.
[SEAL.] SEB'N LERDO DE TEJADA.

NETHERLANDS.

Concluded May 22, 1880; *Ratifications exchanged at Washington July* 29, 1880; *proclaimed July* 30, 1880.

The United States of America and His Majesty the King of the Netherlands having judged it expedient, with a view to the better administration of justice and the prevention of crime within their respective territories and jurisdictions, that persons charged with, or convicted of, the crimes hereinafter enumerated, and being fugitives from justice, should under certain circumstances, be reciprocally delivered up, have resolved to conclude a convention for that purpose, and have appointed as their Plenipotentiaries:

The President of the United States: William Maxwell Evarts, Secretary of State of the United States, and His Majesty the King of the Netherlands: Jonkheer, Rudolph Alexander August Edward von Pestel, Knight of the Order of the Netherlands Lion, His Majesty's Minister Resident in the United States; who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles.

ARTICLE I.

The United States of America and His Majesty the King of the Netherlands reciprocally engage to deliver up to justice all persons convicted of or charged with any of the crimes or offences enumerated in the following article, committed within the respective jurisdiction of the United States of America, or of the Kingdom of the Netherlands, exclusive of the Colonies thereof, such persons being actually within such jurisdiction when the crime or offence was committed, who shall seek an asylum or shall be found within the jurisdiction of the other, exclusive of the colonies of the Netherlands: Provided, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had been there committed.

ARTICLE II.

Persons shall be delivered up, according to the provisions of this convention, who shall have been charged with, or convicted of, any of the following crimes:

1. Murder, comprehending the crimes of assassination, parricide, infanticide, and poisoning.

2. The attempt to commit murder.
3. Rape.
4. Arson.
5. Burglary; or the corresponding crime in the Netherlands law under the description of thefts committed in an inhabited house by night, and by breaking in, by climbing, or forcibly.
6. The act of breaking into and entering public offices, or the offices of banks, banking-houses, savings-banks, trust companies, or insurance companies, with intent to commit theft therein; and also the thefts resulting from such act.
7. Robbery; or the corresponding crime punished in the Netherlands law under the description of theft committed with violence or by means of threats.
8. Forgery, or the utterance of forged papers including the forgery or falsification of official acts of the Government or public authority or courts of justice affecting the title or claim to money or property.
9. The counterfeiting, falsifying or altering of money, whether coin or paper, or of bank notes, or instruments of debt created by National, State or Municipal Governments, or coupons thereof, or of seals, stamps, dies or marks of state; or the utterance or circulation of the same.
10. Embezzlement by public officers charged with the custody or receipt of public funds.
11. Embezzlement by any person or persons hired or salaried, to the detriment of their employers, where the offense is subject to punishment by the law of the Netherlands as *abus de confiance*, if extradition is demanded by the United States, or is subject to punishment as a crime in the United States, if extradition is demanded by the Netherlands.

ARTICLE III.

The provisions of this Convention shall not apply to any crime or offence of a political character, nor to acts connected with such crimes or offences; and no person surrendered under the provision hereof shall in any case be tried or punished for a crime or offence of a political character, nor for any act connected therewith, committed previously to his extradition.

ARTICLE IV.

The present Convention shall not apply to any crime or offence committed previous to the exchange of the ratifications hereof; and no person shall be tried or punished after surrender for any crime or offence other than that for which he was surrendered if committed previous to his surrender, unless such crime or offence be one of those enumerated in Article II. hereof, and shall have been committed subsequent to the exchange of ratifications.

ARTICLE V.

A fugitive criminal shall not be surrendered under the provisions hereof when, by lapse of time, he is exempt from prosecution or punishment for the crime or offence for which the surrender is asked, according to the laws of the country from which the extradition is demanded, or when his extra-

dition is asked for the same crime or offence for which he has been tried, convicted or acquitted in that country, or so long as he is under prosecution for the same.

ARTICLE VI.

If a fugitive criminal, whose extradition may be claimed pursuant to the stipulations hereof, be actually under prosecution for a crime or offence in the country where he has sought asylum, or shall have been convicted thereof, his extradition may be deferred until such proceedings be terminated, and until such criminal shall be set at liberty in due course of law.

ARTICLE VII.

If a fugitive criminal claimed by one of the parties hereto shall also be claimed by one or more powers, pursuant to treaty provisions on account of crimes committed within their jurisdiction, such criminal shall be delivered in preference in accordance with that demand which is the earliest in date.

ARTICLE VIII.

Neither of the contracting parties shall be bound to deliver up, under the stipulations of this convention, its own citizens or subjects.

ARTICLE IX.

The expenses of the arrest, detention, examination and transportation of the accused shall be paid by the government which has preferred the demand for extradition.

ARTICLE X.

Everything found in the possession of the fugitive criminal, at the time of his arrest, which may be material as evidence in making proof of the crime, shall, so far as practicable according to the laws or practice in the respective countries, be delivered up with his person at the time of surrender. Nevertheless, the rights of third parties, with regard to all such articles, shall be duly respected.

ARTICLE XI.

Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties. In the event of the absence of such agents from the country, or its seat of government, requisition may be made by consular officers.

When the person whose extradition shall have been asked, shall have been convicted of the crime, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal and accompanied by an attestation of the official character of the judge by the proper authority, shall be furnished.

If, however, the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country where the crime was committed, and of the depositions upon which such warrant may have been

issued, shall be produced, authenticated as above provided, with such other evidence or proof as may be deemed competent in the case.

If, after an examination, it shall be decided, according to the law and evidence, that extradition is due pursuant to this convention, the fugitive shall be surrendered according to the forms of law prescribed in such cases.

ARTICLE XII.

The present convention shall take effect on the twentieth day after its promulgation in the manner prescribed by the laws of the respective countries. After the convention shall so have gone into operation, it shall continue until one of the two parties shall give to the other six months notice of its desire to terminate it.

This convention shall be ratified, and the ratifications shall be exchanged at Washington or the Hague as soon as possible.

In testimony whereof the respective Plenipotentiaries have signed the present convention, in duplicate, and have hereunto affixed their seals.

Done at Washington, in the English and Dutch languages, on the twenty-second day of May in the year of our Lord eighteen hundred and eighty.

[SEAL.] WILLIAM MAXWELL EVARTS.
[SEAL.] RUDOLPH VON PESTEL.

Concluded June 2, 1887; *Ratifications exchanged May* 31, 1889; *Proclaimed June* 21, 1889.

The United States of America and His Majesty the King of the Netherlands having judged it expedient, with a view to the better administration of justice and the prevention of crime within their respective territories and jurisdictions, that persons charged with, or convicted of, the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have resolved to conclude a new convention for that purpose, and have appointed as their plenipotentiaries:

The President of the United States of America; Thomas F. Bayard, Secretary of State of the United States, and

His Majesty the King of the Netherlands; William Ferdinand Henry von Weckherlin, His Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States, who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

ARTICLE I.

The United States of America and His Majesty the King of the Netherlands reciprocally engage to deliver up to justice all persons convicted of or charged with any of the crimes or offences enumerated in the following article, committed within the respective jurisdiction of the United States of America, or of the Kingdom of the Netherlands, exclusive of the Colonies

thereof, such persons being actually within such jurisdiction when the crime or offence was committed, who shall seek an asylum or shall be found within the jurisdiction of the other, exclusive of the Colonies of the Netherlands: Provided, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had been there committed.

ARTICLE II.

Persons shall be delivered up, according to the provisions of this convention, who shall have been charged with, or convicted of, any of the following crimes:

1. Murder, including infanticide; manslaughter.
2. Rape, bigamy, abortion.
3. Arson.
4. Mutiny, and rebellion on shipboard by two or more passengers against the authority of the commander of the ship, or by the crew or part of the crew, against the commander or the ship's officers.
5. Burglary; or the corresponding crime in the Netherlands law under the description of thefts committed in an inhabited house by night, and by breaking in, by climbing, or forcibly.
6. The act of breaking into and entering public offices or the offices of banks, banking-houses, savings-banks, trust-companies, or insurance companies, with intent to commit theft therein; and also the thefts resulting from such act.
7. Robbery; or the corresponding crime punished in the Netherlands law under the description of theft committed with violence or by means of threats.
8. Forgery, or the utterance of forged papers including the forgery or falsification of official acts of the Government or public authority or courts of justice affecting the title or claim to money or property.
9. The counterfeiting, falsifying or altering of money, whether coin or paper, or of instruments of debt created by national, state, provincial, or municipal governments, or coupons thereof, or of bank-notes, or the utterance or circulation of the same, or the counterfeiting, falsifying or altering of the seals of State.
10. Embezzlement by public officers.
11. Embezzlement by any person or persons hired or salaried, to the detriment of their employers, when the offence is subject to punishment by imprisonment by the laws of both countries.
12. Destruction or loss of a vessel on the high seas, or within the jurisdiction of the party asking the extradition, caused intentionally.
13. Kidnapping of minors, defined to be the abduction or detention of a minor for any unlawful end.
14. Obtaining by false devices money, valuables or other personal property, and the purchase of the same with the knowledge that they have been so obtained, when the crimes or offences are punishable by imprisonment or other corporal punishment by the laws of both countries.
15. Larceny, defined to be the theft of effects, personal property, or money.

16. Wilful and unlawful destruction or obstruction of railroads, which endangers human life.

Extradition shall also be granted for complicity in any of the crimes or offences enumerated in this article, provided that the persons charged with or convicted of such complicity may be punished as accessories with imprisonment of a year or more, by the laws of both countries.

Extradition may also be granted for the attempt to commit any of the crimes above enumerated, when such attempt is punishable with imprisonment of a year or more, by the laws of both contracting parties.

ARTICLE III.

The provisions of this convention shall not apply to any crime or offence of a political character, nor to acts connected with such crimes or offences; and no person surrendered under the provisions hereof shall in any case be tried or punished for a crime or offence of a political character, nor for any act connected therewith, committed previously to his extradition.

ARTICLE IV.

No person shall be tried or punished, after surrender, for any crime or offence other than that for which he was surrendered, if committed previous to his surrender, unless such crime or offence be one of those enumerated in Article II hereof.

ARTICLE V.

A fugitive criminal shall not be surrendered under the provisions hereof when, by lapse of time, he is exempt from prosecution or punishment for the crime or offence for which the surrender is asked, according to the laws of the country from which the extradition is demanded, or when his extradition is asked for the same crime or offence for which he has been tried, convicted or acquitted in that country, or so long as he is under prosecution for the same.

ARTICLE VI.

If the person whose extradition may be claimed pursuant to the stipulations hereof, be actually under prosecution for a crime or offence in the country where he has sought asylum, or shall have been convicted thereof, his extradition may be deferred until such proceedings be terminated, and until such criminal shall be set at liberty in due course of law.

ARTICLE VII.

If the person claimed by one of the parties hereto shall also be claimed by one or more powers, pursuant to treaty provisions on account of crimes committed within their jurisdiction, such criminal shall be delivered in preference, in accordance with that demand which is the earliest in date.

ARTICLE VIII.

Neither of the contracting parties shall be bound to deliver up, under the stipulations of this convention, its own citizens or subjects.

ARTICLE IX.

The expenses of the arrest, detention, examination and transportation of the accused shall be paid by the government which has preferred the demand for extradition.

ARTICLE X.

All articles found in the possession of the fugitive criminal at the time of his arrest, which were obtained through the commission of the act of which he is convicted or with which he is charged, or which may be material as evidence in making proof of the crime, shall, so far as practicable according to the laws or practice in the respective countries, be delivered up with his person at the time of surrender. Nevertheless, the rights of third parties, with regard to all such articles, shall be duly respected.

ARTICLE XI.

Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties. In the event of the absence of such agents from the country, or its seat of government, requisition may be made by consular officers.

When the person whose extradition shall have been asked, shall have been convicted of the crime, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal and accompanied by an attestation of the official character of the judge by the proper authority, shall be furnished.

If, however, the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country where the crime was committed, and of the depositions upon which such warrant may have issued, shall be produced, authenticated as above provided, with such other evidence or proof as may be deemed competent in the case.

If, after an examination, it shall be decided, according to the law and evidence, that extradition is due pursuant to this convention, the fugitive shall be surrendered according to the forms of law prescribed in such cases.

ARTICLE XII.

It shall be lawful for any competent judicial authority of the United States of America, upon production of a certificate issued by the Secretary of State that request has been made by the Government of the Netherlands for the provisional arrest of a person convicted or accused of the commission therein of a crime extraditable under this convention, and upon legal complaint that such crime has been so committed, to issue his warrant for the apprehension of such person. But if the formal requisition for surrender with the documentary proofs hereinbefore prescribed be not made as aforesaid, by the diplomatic agent of the demanding government, or, in his absence, by a consular officer thereof, within forty days from the date of the commitment of the person convicted or accused, the prisoner shall be discharged from custody.

And it shall be lawful for any competent judicial authority of the Netherlands, upon production of a certificate issued by the Minister of Foreign

Affairs that request has been made by the Government of the United States for the provisional arrest of a person convicted or accused of the commission therein of a crime extraditable under this convention, to issue his warrant for the apprehension of such person. But if the formal requisition for surrender with the documentary proofs hereinbefore prescribed be not made as aforesaid by the diplomatic agent of the demanding government, or, in his absence, by a consular officer thereof, within forty days from the date of the arrest of the person convicted or accused, the prisoner shall be discharged from custody.

ARTICLE XIII.

The present convention shall take effect on the twentieth day after its promulgation in the manner prescribed by the laws of the respective countries. On the same day the Convention entered into by the two contracting parties on the 22nd day of May, 1880, shall be abrogated and annulled. But the present Convention shall be held to apply to crimes enumerated in the former convention and committed prior to its abrogation and annullment. And as to other crimes, the present convention shall not be held to operate retroactively.

After the present convention shall have gone into operation, it shall continue until one of the two parties shall give to the other six months' notice of its desire to terminate it.

This convention shall be ratified, and the ratifications shall be exchanged at Washington or The Hague as soon as possible.

In testimony whereof the respective plenipotentiaries have signed the present convention, in duplicate, and have hereunto affixed their seals.

Done at the City of Washington the second day of June in the year of our Lord, one thousand eight hundred and eighty-seven.

[SEAL.] T. F. BAYARD.

[SEAL.] W. F. H. VON WECKHERLIN.

NICARAGUA.

Concluded June 25, 1870; *Ratifications exchanged at Managua June* 24, 1871; *proclaimed September* 19, 1871.

The United States of America and the Republic of Nicaragua, having judged it expedient, with a view to the better administration of justice, and to prevention of crimes within their respective territories and jurisdiction, that persons convicted of, or charged with the crimes hereinafter mentioned, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have resolved to conclude a convention for that purpose, and have appointed as their Plenipotentiaries:

The President of the United States, Charles N. Riotte, a citizen and Minister Resident of the United States in Nicaragua, the President of the Republic of Nicaragua, Mister Tomas Ayon, Minister for For[eign] Relations;

Who, after reciprocal communication of their full powers, found in good and due form, have agreed upon the following articles, viz:

ARTICLE I.

The Government of the United States and the Government of Nicaragua mutually agree to deliver up persons who, having been convicted of or charged with the crimes specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other: Provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial, if the crime had been there committed.

ARTICLE II.

Persons shall be delivered up, who shall have been convicted of, or be charged, according to the provisions of this convention, with any of the following crimes:

1. Murder, comprehending assassination, parricide, infanticide, and poisoning.

2. The crimes of rape, arson, piracy, and mutiny on board a ship, whenever the crew, or part thereof, by fraud or violence against the commander, have taken possession of a vessel.

3. The crime of burglary, defined to be the action of breaking and entering by night into the house of another with the intent to commit felony; and the crime of robbery, defined to the action of feloniously and forcibly taking from the person of another goods or money, by violence, or putting him in fear.

4. The crime of forgery, by which is understood the utterance of forged papers, the counterfeiting of public, sovereign, or government acts.

5. The fabrication or circulation of counterfeit money, either coin or paper, of public bonds, bank-notes, and obligations, and in general of all titles of instruments of credit, the counterfeiting of seals, dies, stamps, and marks of State and public administrations, and the utterance thereof.

6. The embezzlement of public moneys, committed within the jurisdiction of either party, by public officers or depositors.

7. Embezzlement by any person or persons hired or salaried, to the detriment of their employers, when these crimes are subjected to infamous punishment.

ARTICLE III.

The provisions of this treaty shall not apply to any crime or offence of a political character, and the person or persons delivered up for the crimes enumerated in the preceding article, shall in no case be tried for any ordinary crime, committed previously to that for which his or their surrender is asked.

ARTICLE IV.

If the person, whose surrender may be claimed pursuant to the stipulations of the present treaty, shall have been arrested for the commission of

offences in the country where he has sought an asylum, or shall have been convicted thereof, his extradition may be deferred until he shall have been acquitted, or have served the term of imprisonment to which he may have been sentenced.

ARTICLE V.

Requisitions for the surrender of fugitives from justice shall be made by the respective Diplomatic Agents of the contracting parties, or, in the event of the absence of these from the country or its seat of government, they may be made by superior consular officers. If the person whose extradition may be asked for shall have been convicted of a crime, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal, and an attestation of the official character of the judge by the proper executive authority, and of the latter by the Minister or Consul of the United States or of Nicaragua, respectively, shall accompany the requisition. When, however, the fugitive shall have been merely charged with crime, a duly authenticated copy of the warrant of his arrest in the country where the crime may have been committed, and of the depositions upon which such warrant may have been issued, must accompany the requisition as aforesaid. The President of the United States, or the proper executive authority in Nicaragua, may then issue a warrant for the apprehension of the fugitive, in order that he may be brought before the proper judicial authority for examining the question of extradition. If it should be decided that, according to law and evidence, the extradition is due pursuant to this treaty, the fugitive may be given up according to the forms prescribed in such cases.

ARTICLE VI.

The expenses of the arrest, detention, and transportation of the persons claimed shall be paid by the Government in whose name the requisition shall have been made.

ARTICLE VII.

This convention shall continue in force during five (5) years from the day of exchange of ratifications; but if neither party shall have given to the other six (6) months previous notice of its intention to terminate the same, the convention shall remain in force five (5) years longer, and so on.

The present convention shall be ratified and the ratifications exchanged at the capital of Nicaragua, or any other place temporally occupied by the Nicaraguan Government, within twelve (12) months, or sooner if possible.

In witness whereof the respective Plenipotentiaries have signed the present convention in duplicate, and have thereunto affixed their seals.

Done at the city of Managua, capital of the Republic of Nicaragua, the twenty-fifth day of June, one thousand eight hundred and seventy, of the Independence of the United States the ninety-fourth, and of the Independence of Nicaragua the fifty-ninth.

[SEAL.] CHARLES N. RIOTTE.

[SEAL.] TOMAS AYON.

OLDENBURG.

DECLARATION OF ACCESSION TO THE CONVENTION FOR THE EXTRADITION OF CRIMINALS, FUGITIVE FROM JUSTICE, OF JUNE 16, 1852, BETWEEN THE UNITED STATES AND PRUSSIA AND OTHER STATES OF THE GERMANIC CONFEDERATION, AND TO ADDITIONAL ARTICLE THERETO OF NOVEMBER 16, 1852.

Signed December 30, 1853; *proclaimed March* 21, 1853.

[Translation.]

Whereas a treaty for the reciprocal extradition of fugitive criminals, in special cases, was concluded between Prussia and other States of the Germanic Confederation, on the one hand, and the United States of North America on the other, under date of June 16th, 1852, at Washington, by the Plenipotentiaries of the contracting parties, and has been ratified by the contracting Governments; and whereas, in the second article of the same, the United States of North America have declared that they agree that the stipulations of the aforesaid treaty shall be applicable to every other State of the Germanic Confederation which shall have subsequently declared its accession to the treaty: Now, therefore, in accordance therewith, the Government of His Royal Highness the Grand Duke of Oldenburg hereby declares its accession to the aforesaid treaty of June 16th, 1852, which is, word for word, as follows.

[The original declaration here includes a copy in German of the treaty of June 16, 1852, and of the additional article thereto of November 16, 1852.] and hereby expressly gives assurance that each and every article and stipulation of this treaty shall be faithfully observed and enforced within the territory of the Grand Duchy of Oldenburg.

In testimony whereof, the Grand Ducal Minister of State of Oldenburg, in the name of His Royal Highness the Grand Duke of Oldenburg, has executed the present declaration of accession, and caused the Ministerial seal to be affixed thereto.

Done at Oldenburg, December thirtieth, one thousand eight hundred and fifty-three.

[SEAL.] VON RÖSSING,
Grand Ducal Minister of State of Oldenburg.

ORANGE FREE STATE.

Concluded December 22, 1871; *Ratifications exchanged at Washington August* 18, 1873; *proclaimed August* 23, 1873.

ARTICLE VIII.

The United States of America and the Orange Free State, on requisitions made in their name through the medium of their respective diplomatic or consular agents, shall deliver up to justice persons who, being charged with the crimes enumerated in the following article, committed within the

jurisdiction of the requiring party, shall seek asylum or shall be found with the territories of the other.

Provided, That this shall be done only, when the fact of the commission of the crime shall be so established as to justify their apprehension and commitment for trial, if the crime had been committed in the country where the person so accused, shall be found.

ARTICLE IX.

Persons shall be delivered up according to the provisions of this convention, who shall be charged with any of the following crimes, to wit: Murder, (including assassination, parricide, infanticide, and poisoning;) attempt to commit murder, rape, fogery or the emission of forged papers, arson, robbery with violence, intim[id]ation or forcible entry of an inhabited house, piracy; embezzlement by public officers, or by persons hired or salaried to the detriment of their employers, when these crimes are subject to infamous punishment.

ARTICLE X.

The surrender shall be made by executives of the contracting parties respectively.

ARTICLE XI.

The expense of detention and delivery effected pursuant to the preceding articles, shall be at the cost of the party making the demand.

ARTICLE XII.

The provisions of the aforegoing articles relating to the surrender of fugitive criminals, shall not apply to offences committed before the date hereof, nor to those of a political character.

OTTOMAN PORTE.

Concluded August 11, 1874; *Ratifications exchanged at Constantinople April* 22, 1875; *proclaimed May* 26, 1875.

The United States of America and His Imperial Majesty the Sultan, having judged it expedient, with a view to the better administration of justice and to the prevention of crimes within their respective territories and jurisdiction, that persons convicted of or charged with the crimes hereinafter specified, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have resolved to conclude a convention for that purpose, and have appointed as their Plenipotentiaries:

The President of the United States George H. Boker, Minister Resident of the United States of America near the Sublime Porte; and His Imperial Majesty the Sultan, His Excellency A. Aarifi Pasha, his Minister for For-

eign Affairs; who, after reciprocal communication of their full powers, found in good and due form, have agreed upon the following articles, to wit:

ART. I.

The Government of the United States and the Ottoman Government mutually agree to deliver up persons who, having been convicted of or charged with the crimes specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other: *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial, if the crime had been there committed.

ART. II.

Persons shall be delivered up who shall have been convicted of, or be charged, according to the provisions of this convention, with any of the following crimes:

1st. Murder, comprehending the crimes designatedby the terms of parricide, assassination, poisoning, and infanticide.

2d. The attempt to commit murder.

3rd. The crimes of rape, arson, piracy, and mutiny on board a ship, whenever the crew, or part thereof, by fraud or violence against the commander, have taken possession of the vessel.

4th. The crime of burglary, defined to be the action of breaking and entering by night into the house of another with the intent to commit felony; and the crime of robbery, defined to be the action of feloniously and forcibly taking from the person of another goods or money, by violence, or putting him in fear.

5th. The crime of forgery, by which is understood the utterance of forged papers, the counterfeiting of public, sovereign, or government acts.

6th. The fabrication or circulation of counterfeit money, either coin or paper, of public bonds, bank-notes and obligations and in general of all things, being titles and instruments of credit, the counterfeiting of seals, dies, stamps, and marks of state and public administrations and the utterance thereof.

7th. The embezzlement of public moneys committed within the jurisdiction of either party, by public officers or depositors.

8th. Embezzlement by any person or person hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment.

ART. III.

The provisions of this treaty shall not apply to any crime or offence of a political character, and the person or persons delivered up for the crimes enumerated in the preceding article shall in no case be tried for any ordinary crime, committed previously to that for which his or their surrender is asked.

ART. IV.

If the person whose surrender may be claimed, pursuant to the stipulations of the present treaty, shall have been arrested for the commission of

offences in the country where he has sought an asylum, or shall have been convicted thereof, his extradition may be deferred until he shall have been acquitted, or have served the term of imprisonment to which he may have been sentenced.

ART. V.

Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties, or in the event of the absence of these from the country, or its seat of government, they may be made by superior consular officers. If the person whose extradition may be asked for shall have been convicted of a crime, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal and an attestation of the official character of the judge by the proper executive authority, and of the latter by the minister or consul of the United States or of the Sublime Porte, respectively, shall accompany the requisition. When, however, the fugitive shall have been merely charged with a crime, a duly authenticated copy of the warrant for his arrest in the country where the crime may have been committed, or* of the depositions upon which such warrant may have been issued, must accompany the requisition as aforesaid. The President of the United States or the proper executive authority in Turkey may then issue a warrant for the apprehension of the fugitive, in order that he may be brought before the proper judicial authority for examination. If it should then be decided that, according to law and the evidence, the extradition is due pursuant to the treaty, the fugitive may be given up according to the forms prescribed in such cases.

ART. VI.

The expenses of the arrest, detention, and transportation of the persons claimed shall be paid by the government in whose name the requisition has been made.

ART. VII.

Neither of the contracting parties shall be bound to deliver up its own citizens under the stipulations of this treaty.

ART. VIII.

This convention shall continue in force during five (5) years from the day of exchange of ratification, but if neither party shall have given to the other six (6) months' previous notice of its intention to terminate the same, the convention shall remain in force five years longer, and so on.

The present convention shall be ratified, and the ratifications exchanged at Constantinople, within twelve (12) months, and sooner, if possible.

In witness whereof, the respective Plenipotentiaries have signed the present convention in duplicate, and have thereunto affixed their seals.

Done at Constantinople the eleventh day of August one thousand eight hundred and seventy-four.

[SEAL.] GEO. H. BOKER.
[SEAL.] A. AARIFI.

* In the French text the word *et* (and) follows the word *commis* (committed).

PERU.*

Concluded September 12, 1870; *Ratifications exchanged at Lima May* 28, 1874; *proclaimed July* 27, 1874.

The United States of America and the Republic of Peru, having judged it expedient, with a view to the better administration of justice and the prevention of crime within their respective territories and jurisdictions, that persons charged with the crimes hereinafter enumerated should, under certain circumstances, be reciprocally delivered up, have resolved to conclude a treaty for this purpose, and have named as their respective Plenipotentiaries, that is to say: the President of the United States of America has appointed Alvin P. Hovey, Envoy Extraordinary and Minister Plenipotentiary of the United States of America near the Government of the Republic of Peru; and the President of Peru has appointed His Excellency Doctor José Loayza, Minister of Foreign Affairs of Peru; who, after having communicated to each other their respective full powers, found in good and true form, have agreed upon and concluded the following articles:

ARTICLE I.

It is agreed that the contracting parties shall, on requisitions made in their name through the medium of their respective diplomatic agents, deliver up to justice persons who, being accused or convicted of the crimes enumerated in Article II of the present treaty, committed within the jurisdiction of the requiring party, shall seek an asylum, or shall be found within the territories of the other: *Provided*, That this shall be done only when the fact of the commission of the crime shall be so established as that the laws of the country in which the fugitive or the person so accused shall be found would justify his or her apprehension and commitment for trial if the crime had been there committed.

ARTICLE II.

Persons shall be so delivered up who shall be charged, according to the provisions of this treaty, with any of the following crimes, whether as principals, accessories, or accomplices, to wit:

1. Murder, comprehending the crimes of parricide, assassination, poisoning, and infanticide.
2. Rape, abduction by force.
3. Bigamy.
4. Arson.
5. Kidnapping, defining the same to be the taking or carrying away of a person by force or deception.
6. Robbery, highway robbery, larceny.
7. Burglary, defined to be the action of breaking and entering by night-time into the house of another person with the intent to commit a felony.
8. Counterfeiting or altering money, the introduction of fraudulent commerce of and in false coin and money; counterfeiting the certificates or

* Terminated March 31, 1886.

obligations of the Government, of bank-notes, and of any other documents of public credit, the uttering and use of the same; forging or altering judicial judgments or decrees of the Government or courts, of the seals, dies, postage-stamps, and revenue-stamps of the Government, and the use of the same; forging public and authentic deeds and documents, both commercial and of banks, and the use of the same.

9. Embezzlement of public moneys committed within the jurisdiction of either party by public officers or bailees, and embezzlement by any persons hired or salaried.

10. Fraudulent bankruptcy.

11. Fraudulent barratry.

12. Mutiny on board of a vessel, when the persons who compose the crew have taken forcible possession of the same or have transferred the ship to pirates.

13. Severe injuries intentionally caused on railroads, to telegraph lines, or to persons by means of explosion of mines or steam-boilers.

14. Piracy.

ARTICLE III.

The provisions of the present treaty shall not be applied in any manner to any crime or offense of a purely political character, nor shall the provisions of the present treaty be applied in any manner to the crimes enumerated in the second article committed anterior to the date of the exchange of the ratification hereof. Neither of the contracting parties shall be bound to deliver up its own citizens under the stipulations of this treaty.

ARTICLE IV.

The extradition will be granted in virtue of the demand made by the one Government on the other, with the remission of a condemnatory sentence, an order of arrest, or of any other process equivalent to such order, in which will be specified the character and gravity of the imputed acts, and the dispositions of the penal laws relative to the case. The documents accompanying the demand for extradition shall be originals or certified copies, legally authorized by the tribunals or by a competent person. If possible, there shall be remitted at the same time a descriptive list of the individual required, or any other proof towards his identity.

ARTICLE V.

If the person accused or condemned is not a citizen of either of the contracting powers, the Government granting the extradition will inform the Government of the country to which the accused or condemned may belong of the demand made, and if the last-named Government reclaims the individual on its own account for trial in its own tribunals, the Government to which was made the demand of extradition may, at will, deliver the criminal to the State in whose territories the crime was committed, or to that to which the criminal belongs. If the accused or sentenced person whose extradition may be demanded, in virtue of the present convention, from one of the contracting parties, should at the same time be the subject of claims from one or other Governments simultaneously for crimes or mis-

demeanors committed in their respective territories, he or she shall be delivered up to that Government in whose territories the offense committed was of the gravest character; and when the offenses are of like nature and gravity, the delivery will be made to the Government making the first demand; and if the dates of the demands be the same, that of the nation of which the criminal may belong will be preferred.

ARTICLE VI.

If the person claimed is accused or sentenced in the country where he may have taken refuge, for a crime or misdemeanor committed in that country, his delivery may be delayed until the definitive sentence releasing him be pronounced, or until such time as he may have complied with the punishment inflicted on him in the country where he took refuge.

ARTICLE VII.

In cases not admitting of delay, and especially in those where there is danger of escape, each of the two Governments, authorized by the order for apprehension, may, by the most expeditious means, ask and obtain the arrest of the person accused or sentenced, on condition of presenting the said order for apprehension as soon as may be possible, not exceeding four months.

ARTICLE VIII.

All expenses whatever of detention and delivery effected in virtue of the preceding provisions shall be borne and defrayed by the Government in whose name the requisition shall have been made.

ARTICLE IX.

This treaty shall commence from the date of the exchange of the ratifications, and shall continue in force until it shall be abrogated by the contracting parties or one of them; but it shall not be abrogated, except by mutual consent, unless the party desiring to abrogate it shall give twelve months' previous notice.

ARTICLE X.

The present treaty shall be ratified in conformity with the constitutions of the two countries, and the ratifications shall be exchanged at the cities of Washington or Lima, within eighteen months from the date hereof, or sooner if possible.

In witness whereof we, the Plenipotentiaries of the United States of America and the Republic of Peru, have signed and sealed these presents.

Done in the city of Lima, in duplicate, English and Spanish, this the twelfth day of September, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.] ALVIN P. HOVEY.

[SEAL.] JOSÉ J. LOAYZA.

PRUSSIA AND OTHER STATES OF THE GERMANIC CONFEDERATION.

Concluded June 16, 1852; *Ratifications exchanged at Washington May* 30, 1853; *proclaimed June* 1, 1853.

Whereas it is found expedient, for the better administration of justice and the prevention of crime within the territories and jurisdiction of the parties respectively, that persons committing certain heinous crimes, being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, and also to enumerate such crimes explicitly; and whereas the laws and constitution of Prussia, and of the other German States, parties to this convention, forbid them to surrender their own citizens to a foreign jurisdiction, the Government of the United States, with a view of making the convention strictly reciprocal, shall be held equally free from any obligation to surrender citizens of the United States: Therefore, on the one part, the United States of America, and, on the other part, His Majesty the King of Prussia, in his own name, as well as in the name of His Majesty the King of Saxony, His Royal Highness the Elector of Hesse, His Royal Highness the Grand Duke of Hesse and on Rhine, His Royal Highness the Grand Duke of Saxe-Weimar-Eisenach, His Highness the Duke of Saxe-Meiningen, His Highness the Duke of Saxe-Altenburg, His Highness the Duke of Saxe-Coburg-Gotha, His Highness the Duke of Brunswick, His Highness the Duke of Anhalt-Dessau, His Highness the Duke of Anhalt-Bernburg, His Highness the Duke of Nassau, His Serene Highness the Prince Schwarzburg-Rudolstadt, His Serene Highness the Prince of Schwarzburg-Sondershausen, Her Serene Highness the Princess and Regent of Waldeck, His Serene Highness the Prince of Reuss, elder branch, His Serene Highness the Prince of Reuss, junior branch, His Serene Highness the Prince of Lippe, His Serene Highness the Landgrave of Hesse-Homburg, as well as the free city of Francfort, having resolved to treat on this subject, have for that purpose appointed their respective Plenipotentiaries to negotiate and conclude a convention, that is to say:

The President of the United States of America, Daniel Webster, Secretary of State, and His Majesty the King of Prussia in his own name, as well as in the name of the other German Sovereigns above enumerated, and the free city of Francfort, Frederic Charles Joseph von Gerolt, his said Majesty's Minister Resident near the Government of the United States;

Who, after reciprocal communication of their respective powers, have agreed to and signed the following articles:

Article I.

It is agreed that the United States and Prussia, and the other States of the Germanic Confederation included in or which may hereafter accede to this convention, shall upon mutual requisitions by them or their ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged papers, or the fabrication or circulation of counterfeit money,

whether coin or paper money, or the embezzlement of public moneys committed within the jurisdiction of either party, shall seek an asylum, or shall be found within the territories of the other: *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed; and the respective judges and other magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made upon oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates respectively, to the end that the evidence of criminalty may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

ARTICLE II.

The stipulations of this convention shall be applied to any other State of the Germanic Confederation which may hereafter declare its accession thereto.

ARTICLE III.

None of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

ARTICLE IV.

Whenever any person accused of any of the crimes enumerated in this convention shall have committed a new crime in the territories of the State where he has sought an asylum, or shall be found, such person shall not be delivered up under the stipulations of this convention until he shall have been tried, and shall have received the punishment due to such new crime, or shall have been acquitted thereof.

ARTICLE V.

The present convention shall continue in force until the 1st of January, 1858, and if neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the high contracting parties shall have given notice to the other of such intention; each of the high contracting parties reserving to itself the right of giving such notice to the other, at any time after the expiration of the said first day of January, 1858.

ARTICLE VI.

The present convention shall be ratified by the President, by and with the advice and consent of the Senate of the United States, and by the Gov-

ernment of Prussia, and the ratifications shall be exchanged at Washington within six months from the date hereof, or sooner if possible.

In faith whereof we, the respective Plenipotentiaries, have signed this convention, and have hereunto affixed our seals.

Done in triplicate at Washington, the sixteenth day of June, one thousand eight hundred and fifty-two, and the seventy-sixth year of the Independence of the United States.

[SEAL.] DAN'L WEBSTER.
[SEAL.] FR. V. GEROLT.

By the President of the United States of America.

A PROCLAMATION.

Whereas it is provided by the second article of the convention of the 16th of June, 1852, between the United States and Prussia and other States of the Germanic Confederation, for the mutual delivery of criminals, fugitives from justice, in certain cases, that the stipulations of that convention shall be applied to any other State of the Germanic Confederation which might thereafter declare its accession thereto;

And whereas the Free Hanseatic city of Bremen has declared its accession to the said convention, and the exchange of the said declaration for my acceptance of the same was made at Washington on the 14th instant, by Rudolph Schleiden, Minister Resident of the said Free Hanseatic city of Bremen, and William L. Marcy, Secretary of State of the United States, on behalf of their respective governments:

Now, therefore, be it known, that I, FRANKLIN PIERCE, President of the United States of America, have caused this information to be made public, in order that the stipulations of the said convention may be observed and fulfilled with good faith in respect to the Free Hanseatic city of Bremen by the United States and the citizens thereof.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at Washington the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-three, and of the Independence of the United States the seventy-eighth.

[SEAL.] FRANKLIN PIERCE.

By the President:
W. L. MARCY, *Secretary of State.*

[Notice of the accession of the Governments of Mecklenburg-Schwerin, Mecklenburg-Strelitz, Oldenburg, Schaumburg-Lippe, and Würtemburg to the foregoing convention of June 16, 1852, with Prussia and other States of the Germanic Confederation, and to the additional article thereto of November 16, 1852, with the date of such accession, and that of the proclamation of the fact by the President, will be found under the names of the respective States in their alphabetical order.]

SALVADOR.

Concluded May, 23, 1870; *Ratifications exchanged at Washington, March* 2, 1874; *proclaimed March* 4, 1874.

The United States of America and the Republic of Salvador, having judged it expedient, with a view to the better administration of justice, and to the prevention of crimes within their respective territories and jurisdiction, that persons convicted of or charged with the crimes hereinafter specified, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have resolved to conclude a convention for that purpose, and have appointed as their Plenipotentiaries, the President of the United States, Alfred T. A. Torbert, Minister Resident to Salvador; the President of the Republic of Salvador, Señor Doctor Don Gregorio Arbizú, Minister of Foreign Affairs; who, after a reciprocal communication of their full powers, found in good and due form, have agreed upon the following articles, to wit:

Article 1st.

The Government of the United States and the Government of Salvador mutually agree to deliver up persons who, having been convicted of or charged with the crimes specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other: *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial if the crime had been there committed.

Article 2nd.

Persons shall be delivered up who shall have been convicted of, or be charged, according to the provisions of this convention, with any of the following crimes:

1. Murder, comprehending the crimes designated in the penal codes of the contracting parties by the terms homicide, parricide, assassination, poisoning, and infanticide.

2. The attempt to commit murder.

3. The crimes of rape, arson, piracy, and mutiny on board a ship, whenever the crew, or part thereof, by fraud or violence against the commander, have taken possession of the vessel.

4. The crime of burglary, defined to be the action of breaking and entering by night into the house of another with the intent to commit felony; and the crime of robbery, defined to be the action of feloniously and forcibly taking from the person of another goods or money by violence, or putting him in fear.

5. The crime of forgery, by w[h]ich is understood the utterance of forged papers, the counterfeiting of public, sovereign, or government acts.

6. The fabrication or circulation of counterfeit money, either coin or paper, of public bonds, bank-notes, and obligations, and in general of all

things being titles or instruments of credit, the counterfeiting of seals, dies, stamps, and marks of state and public administration, and the utterance thereof.

7. The embezzlement of public moneys, committed within the jurisdiction of either party, by public officers or depositors.

8. Embezzlement, by any person or persons, hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment.

ARTICLE 3RD.

The provisions of this treaty shall not apply to any crime or offence of a political character; and the person or persons delivered up for the crimes enumerated in the preceding article shall in no case be tried for any ordinary crime committed previously to that for which his or their surrender is asked.

ARTICLE 4TH.

If the person whose surrender may be claimed, pursuant to the stipulations of the present treaty, shall have been arrested for the commission of offences in the country where he has sought an asylum,* shall have been convicted therefor, his extradition may be deferred until he shall have been acquitted or have served the term of imprisonment to which he may have been sentenced.

ARTICLE 5TH.

In no case and for no motive shall the high contracting parties be obliged to deliver up their own subjects. If, in conformity with the laws in force in the State to which the accused belongs, he ought to be submitted to criminal procedure for crimes committed in the other state, the latter must communicate the information and documents, send the implements or tools which were employed to perpetrate the crime, and procure every other explanation or evidence necessary to prosecute the case.

ARTICLE 6TH.

Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties, or in the event of the absence of these from the country, or its seat of government, they may be made by superior consular officers. If the person whose extradition may be asked for shall have been convicted of a crime, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal, and an attestation of the official c[h]aracter of the judge by the proper executive authority, and of the latter by the minister or consul of the United States or of Salvador, respectively, shall accompany the requisition. When, however, the fugitive shall have been merely charged with crime, a duly-authenticated copy of the warrant for his arrest in the

* In the Spanish text the conjunction "O" (or) appears after the word "asilo" (asylum); the non-appearance of the corresponding word in the English text appears to be a clerical omission.

country where the crime may have been committed, or the depositions upon which such warrant may have been issued, must accompany the requisition aforesaid. The President of the United States or the President of Salvador may then issue a warrant for the apprehension of the fugitive, in order that he may be brought before the proper judicial authority for examination. If it should then be decided that, according to law and the evidence, the extradition is due, pursuant to the treaty, the fugitive may be given up according to the forms prescribed in such cases.

ARTICLE 7TH.

The expenses of the arrest, detention, and transportation of the persons claimed shall be paid by the government in whose name the requisition shall have been made.

ARTICLE 8TH.

This convention shall continue in force during (10) ten years from the day of exchange of ratifications; but if neither party shall have given to the other (6) six months' previous notice of its intention to terminate the same, the convention shall remain in force ten years longer, and so on.

The present convention shall be ratified and the ratifications exchanged at the city of Washington within (12) twelve months, and sooner if possible.

In witness whereof, the respective Plenipotentiaries have signed the present convention in duplicate, and have thereunto affixed their seals.

Done at the city of San Salvador the twenty-third day of May, A. D. one thousand eight hundred and seventy, and of the Independence of the United States the ninety-fourth.

[SEAL.] ALFRED T. A. TORBERT.
[SEAL.] GREGO. ARBIZÚ.

SCHAUMBURG-LIPPE.

DECLARATION OF ACCESSION TO THE CONVENTION FOR THE EXTRADITION OF CRIMINALS, FUGITIVE FROM JUSTICE, OF JUNE 16, 1852, BETWEEN THE UNITED STATES AND PRUSSIA AND OTHER STATES OF THE GERMANIC CONFEDERATION, AND TO ADDITIONAL ARTICLE THERETO OF NOVEMBER 16, 1852.

Dated June 7, 1854; proclaimed July 26, 1854.

[Translation.]

Whereas a treaty for the reciprocal extradition of fugitive criminals, in special cases, was concluded between Prussia and other States of the Germanic Confederation on the one hand, and the United States of North America on the other, under date of June 16th, 1852, at Washington, by the Plenipotentiaries of the contracting parties, and has been ratified by the contracting Governments; and whereas, in the second article of the same, the United States of North America have declared that they agree that the stipulations of the aforesaid treaty shall be applicable to any other State of

the Germanic Confederation which shall have subsequently declared its accession to the treaty: Now, therefore, in accordance therewith, the Government of his Serene Highness the Reigning Prince of Schaumburg-Lippe, hereby declares its accession to the aforesaid treaty of June 16th, 1852, which is, word for word, as follows:

[The original declaration here includes a copy in German and English of the treaty of June 16, 1852, and of the additional article thereto of November 16, 1852.]

and hereby expressly gives assurance that each and every article and stipulation of this treaty shall be faithfully observed and enforced within the territory of the Principality of Schaumburg-Lippe.

In testimony whereof, the Government of the Prince, in the name of His Serene Highness the Reigning Prince of Schaumburg-Lippe, has executed the present declaration of accession, and caused the seal of the Government to be thereunto affixed.

Done at Buckeburg, the seventh day of June, one thousand eight hundred and fifty-four.

The Government of the Prince of Schaumburg-Lippe.

V. SAUER.

[SEAL.] WERNER.

SPAIN.

Concluded January 5, 1877; *Ratifications exchanged at Washington February* 21, 1877; *proclaimed February* 21, 1877.

The United States of America and His Majesty the King of Spain having judged it expedient, with a view to the better administration of justice and the prevention of crime within their respective territories and jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have resolved to conclude a Convention for that purpose, and have appointed, as their Plenipotentiaries, the President of the United States, Caleb Cushing, the Envoy Extraordinary and Minister Plenipotentiary of the United States near the Government of Spain; and His Majesty the King of Spain, His Excellency Don Fernando Calderon y Collantes, his Minister of State, Knight Grand Cross of the Royal and distinguished Order of Cárlos Tercero, of those of Leopold of Austria and of Belgium, of that of our Lord Jesus Christ of Portugal, of the Savior of Greece, of the Holy Sepulchre, and of the Nishan Iftijar of Tunis; who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

ARTICLE I.

It is agreed that the Government of the United States and the Government of Spain shall, upon mutual requisition duly made as herein provided, deliver up to justice all persons who may be charged with, or who have

been convicted of, any of the crimes specified in Article II. of this Convention, committed within the jurisdiction of one of the contracting parties, while said persons were actually within such jurisdiction when the crime was committed, and who shall seek an asylum or shall be found within the territories of the other; provided that such surrender shall take place only upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had been there committed.

ARTICLE II.

Persons shall be delivered up, according to the provisions of this Convention, who shall have been charged with, or convicted of, any of the following crimes:

1. Murder, comprehending the crimes designated by the terms of parricide, assassination, poisoning or infanticide.
2. The attempt to commit murder.
3. Rape.
4. Arson.
5. Piracy or mutiny on board ship when the crew or other persons on board, or part thereof, have, by fraud or violence against the commander, taken possession of the vessel.
6. Burglary, defined to be the act of breaking and entering into the house of another in the night time with intent to commit a felony therein.
7. The act of breaking and entering the offices of the Government and public authorities, or the offices of banks, banking-houses, saving-banks, trust companies, insurance companies, with intent to commit a felony therein.
8. Robbery, defined to be the felonious and forcible taking from the person of another, goods or money by violence or by putting him in fear.
9. Forgery, or the utterance of forged papers.
10. The forgery or falsification of the official act of the Government or public authority, including courts of justice, or the uttering or fraudulent use of any of the same.
11. The fabrication of counterfeit money, whether coin or paper, counterfeit titles or coupons of public debt, bank-notes or other instruments of public credit; of counterfeit seals, stamps, dies and marks of state or public administrations; and the utterance, circulation or fraudulent use of any of the above-mentioned objects.
12. The embezzlement of public funds, committed within the jurisdiction of one or the other party, by public officers or depositaries.
13. Embezzlement by any person or persons, hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment.
14. Kidnapping, defined to be the detention of a person or persons in order to exact money from them or for any other unlawful end.

ARTICLE III.

The provisions of this Convention shall not import claim of extradition for any crime or offence of a political character, nor for acts connected with

such crimes or offences; and no person surrendered by or to either of the contracting parties in virtue of this Convention, shall be tried or punished for any political crime or offence, nor for any act connected therewith, committed previously to the extradition.

ARTICLE IV.

No person shall be subject to extradition in virtue of this Convention for any crime or offence committed previous to the exchange of the ratifications hereof; and no person shall be tried for any crime or offence other than that for which he was surrendered, unless such crime be one of those enumerated in Article II., and shall have been committed subsequent to the exchange of the ratifications hereof.

ARTICLE V.

A fugitive criminal shall not be surrendered under the provisions hereof when, from lapse of time or other lawful cause, according to the laws of the place within the jurisdiction of which the crime was committed, the criminal is exempt from prosecution or punishment for the offence for which the surrender is asked.

ARTICLE VI.

If a fugitive criminal, whose surrender may be claimed pursuant to the stipulations hereof, be actually under prosecution, out on bail or in custody, for a crime or offence committed in the country where he has sought asylum, or shall have been convicted thereof, his extradition may be deferred until such proceedings be determined and until such criminal shall have been set at liberty in due course of law.

ARTICLE VII.

If a fugitive criminal, claimed by one of the parties hereto shall be also claimed by one or more powers pursuant to treaty provisions on account of crimes committed within their jurisdiction, such criminal shall be delivered, in preference, in accordance with that demand which is the earliest in date.

ARTICLE VIII.

Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this Convention.

ARTICLE IX.

The expenses of the arrest, detention, examination and transportation of the accused shall be paid by the Government which has preferred the demand for extradition.

ARTICLE X.

Everything found in the possession of the fugitive criminal at the time of his arrest, which may be material as evidence in making proof of the crime, shall, so far as practicable, be delivered up with his person at the time of the surrender. Nevertheless, the rights of a third party, with regard to the articles aforesaid, shall be duly respected.

ARTICLE XI.

The stipulations of this Convention shall be applicable to all foreign or colonial possessions of either of the two contracting parties.

Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties. In the event of the absence of such agents from the country or its seat of Government, or where extradition is sought from a colonial possession of one of the contracting parties, requisition may be made by superior consular officers.

It shall be competent for such representatives or such superior consular officers to ask and obtain a mandate or preliminary warrant of arrest for the person whose surrender is sought, whereupon the judges and magistrates of the two Governments shall, respectively, have power and authority, upon complaint made under oath, to issue a warrant for the apprehension of the person charged, in order that he or she may be brought before such judge or magistrate, that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of the fugitive.

If the fugitive criminal shall have been convicted of the crime for which his surrender is asked, a copy of the sentence of the court before which such conviction took place, duly authenticated, shall be produced. If, however, the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country where the crime was committed, and of the depositions upon which such warrant may have been issued, shall be produced, with such other evidence or proof as may be deemed competent in the case.

ARTICLE XII.

This Convention shall continue in force from the day of the exchange of the ratifications thereof, but either party may at any time terminate the same on giving to the other six months' notice of its intention so to do.

In testimony whereof, the respective Plenipotentiaries have signed the present Convention in triplicate, and have hereunto affixed their seals.

Done at the city of Madrid, in triplicate, English and Spanish, this fifth day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] CALEB CUSHING.

[SEAL.] FERND. CALDERON Y COLLANTES

CONVENTION FOR THE EXTRADITION OF CRIMINALS FUGITIVE FROM JUSTICE, BEING SUPPLEMENTAL TO THE CONVENTION OF JANUARY 5, 1877.

Concluded August 7, 1882; Ratifications exchanged at Washington April 19, 1883; proclaimed April 19, 1883.

The President of the United States of America and His Majesty the King of Spain, being satisfied of the propriety of adding some articles to the extradition convention concluded between the United States and Spain on the 5th day of January, 1877, with a view to the better administration of justice and the prevention of crime within their respective territories and jurisdictions, have resolved to conclude a supplementary convention for that purpose, and have appointed as their plenipotentiaries:

The President of the United States, Frederick T. Frelinghuysen, Esquire, Secretary of State of the United States; and His Majesty the King of Spain, His Excellency Don Francisco Barca, Knight Grand Cross of the Royal American Order of Isabel la Católica, His Majesty's Envoy Extraordinary and Minister Plenipotentiary near the Government of the United States;

Who, after having reciprocally exhibited their full powers, found in good and due form, have agreed upon and concluded the following articles:

ARTICLE I.

Paragraph 5 of Article II. of the aforesaid Convention of January 5, 1877, is abrogated, and the following substituted:

5. Crimes committed at sea:

(a) Piracy as commonly known and defined by the law of nations.

(b) Destruction or loss of a vessel caused intentionally, or conspiracy and attempt to bring about such destruction or loss, when committed by any person or persons on board of said vessel, on the high seas.

(c) Mutiny or conspiracy by two or more members of the crew or other persons on board of a vessel on the high seas, for the purpose of rebelling against the authority of the captain or commander of such vessel, or by fraud or violence taking possession of such vessel.

Paragraph 12 of said Article II. is amended to read as follows:

12. The embezzlement or criminal malversation of public funds committed within the jurisdiction of one or the other party, by public officers or depositaries.

Paragraph 13 of said Article II. is likewise modified to read as follows:

13. Embezzlement by any person or persons hired, salaried or employed, to the detriment of their employers or principals, when the crime or offense is punishable by imprisonment or other corporal punishment by the laws of both countries.

Paragraph 14 of said Article II. is likewise modified to read as follows:

14. Kidnapping of minors or adults, defined to be the abduction or detention of a person or persons, in order to exact money from them or from their families, or for any other unlawful end.

ARTICLE II.

In continuation of and as forming part of Article II. of the aforesaid Convention of January 5, 1877, shall be added the following paragraphs:

15. Obtaining by threats of injury, or false devices, money, valuables or other personal property, and the purchase of the same with the knowledge that they have been so obtained, when the crimes or offenses are punishable by imprisonment or other corporal punishment by the laws of both countries.

16. Larceny, defined to be the theft of effects, personal property, or money, of the value of twenty-five dollars or more.

17. Slave-trade, according to the laws of each of the two countries respectively.

18. Complicity in any of the crimes or offenses enumerated in the Convention of January 5, 1877, as well as in these additional articles, provided that the persons charged with such complicity be subject as accessories to imprisonment or other corporal punishment by the laws of both countries.

ARTICLE III.

After Article XI. of the aforesaid Convention of January 5, 1877, shall be inserted the two following articles:

Article XII.

If, when a person accused shall have been arrested in virtue of the mandate or preliminary warrants of arrest, issued by the competent authority as provided in Article XI, hereof, and been brought before a judge or magistrate to the end of the evidence of his or her guilt being heard and examined as hereinbefore provided, it shall appear that the mandate or preliminary warrant of arrest has been issued in pursuance of a request or declaration received by telegraph from the government asking for the extradition, it shall be competent for the judge or magistrate at his discretion to hold the accused for a period not exceeding twenty-five days, so that the demanding government may have opportunity to lay before such judge or magistrate legal evidence of the guilt of the accused; and if, at the expiration of said period of twenty-five days, such legal evidence shall not have been produced before such judge or magistrate, the person arrested shall be released; provided that the examination of the charges preferred against such accused person shall not be actually going on.

Article XIII.

In every case of a request made by either of the two contracting parties for the arrest, detention or extradition of fugitive criminals in pursuance of the convention of January 5, 1877, and of these additional articles, the legal officers or fiscal ministry of the country where the proceedings of extradition are had, shall assist the officers of the government demanding the extradition, before the respective judges and magistrates, by every legal means within their or its power; and no claim whatever for compensation for any of the services so rendered shall be made against the government demanding the extradition; provided however that any officer or officers of the surrendering government, so giving assistance, who shall, in the usual course of their duty, receive no salary or compensation other than specific fees for services performed, shall be entitled to receive from the

government demanding the extradition the customary fees for the acts or services performed by them, in the same manner and to the same amount as though such acts or services had been performed in ordinary criminal proceedings under the laws of the country of which they are officers.

ARTICLE IV.

All the provisions of the aforesaid convention of the 5th of January, 1877, not abrogated by these additional articles, shall apply to these articles with the same force as to the said original Convention.

This additional Convention shall be ratified and the ratifications exchanged at Washington as soon as may be practicable; and upon the exchange of ratifications it shall have immediate effect, and form a part of the aforesaid Convention of January 5, 1877, and continue and be terminable in like manner therewith.

In testimony whereof the respective Plenipotentiaries have signed the present additional Convention in duplicate, in the English and Spanish languages, and have hereunto affixed their seals.

Done at the city of Washington this 7th day of August in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.] FREDK. T. FRELINGHUYSEN.

[SEAL.] FRANCO BARCA.

SWEDEN AND NORWAY.

Concluded March 21, 1860; *Ratifications exchanged at Washington December* 20, 1860; *proclaimed December* 21, 1860.

Whereas, it is found expedient, for the better administration of justice and the prevention of crime within the territories and jurisdiction of the parties respectively, that persons committing certain crimes, being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; and also to enumerate such crimes explicitly: The United States of America on the one part, and His Majesty the King of Sweden and Norway on the other part, having resolved to treat on this subject, have for that purpose appointed their respective Plenipotentiaries to negotiate and conclude a convention, that is to say:

The President of the United States of America, Lewis Cass, Secretary of State of the United States, and His Majesty the King of Sweden and Norway, Baron Nicholas William de Wetterstedt, Knight of the Orders of the Polar Star and of St. Olaff, Commander of the Order of Dannebrog of Denmark, his said Majesty's Minister Resident near the Government of the United States;

Who, after reciprocal communication of their respective powers, have agreed to and signed the following articles:

ARTICLE I.

It is agreed that the high contracting parties shall, upon mutual requisitions by them, their Diplomatic or Consular Agents, respectively made,

deliver up to justice all persons who, being charged with or condemned for any of the crimes enumerated in the following article, committed within the jurisdiction of either party, shall seek an asylum or shall be found within the territories of the other: Provided, that this surrender and delivery shall not be obligatory on either of the high contracting parties except upon presentation by the other, in original or in verified copy, of the judicial declaration or sentence establishing the culpability of the fugitive, and issued by the proper authority of the Government who claims the surrender, in case such sentence or declaration shall have been pronounced; said document to be drawn up and certified according to the forms prescribed by the laws of the country making the demand. But if such sentence or declaration shall not have been pronounced, then the surrender may be demanded, and shall be made, when the demanding party shall have furnished such proof of culpability as would have been sufficient to justify the apprehension and commitment for trial of the accused if the offence had been committed in the country where he shall have taken refuge.

ARTICLE II.

Persons shall be so delivered up who shall have been charged with or sentenced for any of the following crimes, to wit: Murder, (including assassination, parricide, infanticide, and poisoning,) or attempt to commit murder; rape; piracy, (including mutiny on board a ship, whenever the crew or part thereof, by fraud or violence against the commander, have taken possession of the vessel;) arson; robbery and burglary; forgery, and the fabrication or circulation of counterfeit money, whether coin or paper money; embezzlement by public officers, including appropriation of public funds.

ARTICLE III.

The expenses of any detention and delivery, effected in virtue of the preceding provisions, shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

ARTICLE IV.

Neither of the contracting parties shall be bound to deliver up, under the stipulations of this convention, any person who, according to the laws of the country where he shall be found, is a citizen or a subject of the same at the time his surrender is demanded.

ARTICLE V.

The provisions of the present convention shall not be applied to any crime or offence of a political character.

ARTICLE VI.

Whenever any person, accused of any of the crimes enumerated in this convention, shall have committed a new crime in the territories of the State where he has sought an asylum or shall be found, such person shall not be

delivered up under the stipulations of this convention until he shall have been tried, and shall have received the punishment due to such new crime, or shall have been acquitted thereof.

ARTICLE VII.

This convention shall not take effect until ten days after its publication, made according to the laws of the respective Governments.

It shall remain in force until the end of six months after either of the high contracting parties shall have given notice to the other of its intention to terminate the same.

It shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by His Majesty the King of Sweden and Norway, and the ratifications shall be exchanged within ten months from the date of its signature, or earlier if possible.

In faith whereof, the respective Plenipotentiaries have signed this convention, and have hereunto affixed their seals.

Done in duplicate, at Washington, the twenty-first day of March, one thousand eight hundred and sixty, and the eighty-fourth year of the Independence of the United States.

[SEAL.] LEW. CASS.

[SEAL.] N. W. DE WETTERSTEDT.

SWITZERLAND.

Concluded November 25, 1850; *Ratifications exchanged at Washington November* 8, 1855; *proclaimed November* 9, 1855.

ARTICLE XIII.

The United States of America and the Swiss Confederation, on requisitions made in their name through the medium of their respective Diplomatic or Consular Agents, shall deliver up to justice persons who, being charged with the crimes enumerated in the following article, committed within the jurisdiction of the requiring party, shall seek asylum or shall be found within the territories of the other: *Provided*, That this shall be done only when the fact of the commission of the crime shall be so established as to justify their apprehension and commitment for trial if the crime had been committed in the country where the persons so accused shall be found.

ARTICLE XIV.

Persons shall be delivered up, according to the provisions of this convention, who shall be charged with any of the following crimes, to wit:

Murder, (including assassination, parricide, infanticide, and poisoning;) attempt to commit murder; rape; forgery, or the emission of forged papers; arson; robbery with violence, intimidation, or forcible entry of an inhabited house; piracy; embezzlement by public officers, or by persons hired or salaried to the detriment of their employers, when these crimes are subject to infamous punishment.

ARTICLE XV.

On the part of the United States, the surrender shall be made only by the authority of the Executive thereof; and on the part of the Swiss Confederation, by that of the Federal Council.

ARTICLE XVI.

The expenses of detention and delivery, effected in virtue of the preceding articles, shall be at the cost of the party making the demand.

ARTICLE XVII.

The provisions of the aforegoing articles relating to the surrender of fugitive criminals shall not apply to offences committed before the date hereof, nor to those of a political character.

TWO SICILIES.*

Concluded October 1, 1855; *Ratifications exchanged at Naples November* 7, 1856; *proclaimed December* 10, 1856.

ARTICLE XXI.

It is agreed that every person who, being charged with or condemned for any of the crimes enumerated in the following article, committed within the States of one the high contracting parties, shall seek asylum in the States, or on board the vessels of war of the other party, shall be arrested and consigned to justice on demand made, through the proper diplomatic channel, by the Government within whose territory the offence shall have been committed.

This surrender and delivery shall not, however, be obligatory on either of the high contracting parties until the other shall have presented a copy of the judicial declaration or sentence establishing the culpability of the fugitive, in case such sentence or declaration shall have been pronounced. But if such sentence or declaration shall not have been pronounced, then the surrender may be demanded, and shall be made, when the demanding Government shall have furnished such proof as would have been sufficient to justify the apprehension, and commitment for trial, of the accused, if the offence had been committed in the country where he shall have taken refuge.

ARTICLE XXII.

Persons shall be delivered up, according to the provisions of this treaty, who shall be charged with any of the following crimes, to wit:

Murder, (including assassination, parricide, infanticide, and poisoning;) attempt to commit murder; rape; piracy; arson; the making and uttering of false money, forgery, including forgery of evidences of public debt,

* Obsolete; place taken by treaty with Italy.

bank-bills, and bills of exchange; robbery with violence; intimidation or forcible entry of an inhabited house; embezzlement by public officers, including appropriation of public funds; when these crimes are subject, by the code of the Kingdom of the Two Sicilies to the punishment *della reclusione*, or other severer punishment, and by the laws of the United States to infamous punishment.

ARTICLE XXIII.

On the part of each country, the surrender of fugitives from justice shall be made only by the authority of the Executive thereof. And all expenses whatever of detention and delivery, effected in virtue of the preceding articles, shall be at the cost of the party making the demand.

ARTICLE XXIV.

The citizens and subjects of each of the high contracting parties shall remain exempt from the stipulations of the preceding articles, so far as they relate to the surrender of fugitive criminals; nor shall they apply to offences committed before the date of the present treaty, nor to offences of a political character, unless the political offender shall also have been guilty of some one of the crimes enumerated in Article XXII.

VENEZUELA.*

Concluded August 27, 1860; *Ratifications exchanged at Caracas August* 9, 1861; *proclaimed September* 25, 1861.

ARTICLE XXVII.

The United States of America and the Republic of Venezuela, on requisitions made in their name through the medium of their respective Diplomatic and Consular Agents, shall deliver up to justice persons who, being charged with the crimes enumerated in the following article, committed within the jurisdiction of the requiring party, shall seek asylum or shall be found within the territories of the other: Provided, That this shall be done only when the fact of the commission of the crime shall be so established as to justify their apprehension and commitment for trial, if the crime had been committed in the country where the persons so accused shall be found; in all of which the tribunals of said country shall proceed and decide according to their own laws.

ARTICLE XXVIII.

Persons shall be delivered up, according to the provisions of this convention, who shall be charged with any of the following crimes, to wit: murder, (including assassination, parricide, infanticide, and poisoning;) attempt to commit murder; rape; forgery; the counterfeiting of money;

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* Terminated October 22, 1870.

arson; robbery with violence, intimidation, or forcible entry of an inhabited house; piracy; embezzlement by public officers, or by persons hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment.

ARTICLE XXIX.

On the part of each country the surrender shall be made only by the authority of the Executive thereof. The expenses of detention and delivery, effected in virtue of the preceding articles, shall be at the cost of the party making the demand.

ARTICLE XXX.

The provisions of the aforegoing articles relating to the surrender of fugitive criminals shall not apply to offences committed before the date hereof, nor to those of a political character.

WÜRTTEMBERG

DECLARATION OF ACCESSION TO THE CONVENTION FOR THE EXTRADITION OF CRIMINALS, FUGITIVE FROM JUSTICE, OF JUNE 16, 1852, BETWEEN THE UNITED STATES AND PRUSSIA AND OTHER STATES OF THE GERMANIC CONFEDERATION.

Dated October 13, 1853; *proclaimed December* 27, 1853.

[Translation.]

Inasmuch as a convention for the reciprocal extradition of fugitive criminals in certain cases, was concluded between Prussia and other States of the Germanic Confed ration on the one hand, and the United States of North America on the other, under date of June 16, 1852, at Washington, by the Plenipotentiaries of the contracting parties, and was ratified by the contracting Governments; and whereas, in the second article thereof, the United States of North America declare that they agree that the stipulations of the aforesaid convention shall be applied to any other State of the Germanic Confederation that shall subsequently declare its accession to the convention, now therefore, in pursuance thereof, the Government of His Majesty the King of Württemberg declares its accession to the aforesaid convention of June 16th, 1852, the text of which is word for word, as follows: [The original declaration here includes a copy, in German and English of the convention of June 16, 1852] and hereby gives the express assurance that each and every article and provision of this convention shall be faithfully observed and executed within the territory of the Kingdom of Württemberg.

In testimony whereof, the Royal Minister of Foreign Affairs of Württemberg has, in the name of His Majesty the King of Württemberg, executed

this certificate of accession, and caused the Royal Official Seal to be thereunto affixed.

Done at Stuttgart, October the 13th, 1853.

[SEAL.] VON NEURATH,

Royal Minister of Foreign Affairs at Württemberg.

CONVENTION RELATIVE TO NATURALIZATION AND FOR EXTRADITION OF CRIMINALS.

Concluded July 27, 1868; *Ratifications exchanged at Stuttgart August* 17, 1869; *exchange of ratifications consented to by Senate March* 2, 1870; *proclaimed March* 7, 1870.

ARTICLE III.

The convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between Württemberg and the United States the $\frac{16 \text{ June, } 1852,}{13 \text{ October, } 1853,}$ remains in force without change.

ANALYSIS OF OFFENCES.

Abduction by force.—Peru.

Abortion.—Belgium, Luxemburg, Netherlands.

Arson.—Austria, Baden, Bavaria, Belgium, Bremen, Dominican Republic, Ecuador, France, Great Britain, Hanover, Hawaiian Islands, Hayti, Italy, Japan, Luxemburg, Mecklenburg-Schwerin, Mecklenburg-Strelitz, Mexico, Netherlands, Nicaragua, North German Union, Oldenburg, Orange Free State, Ottoman Porte, Peru, Prussia, Saxony, Hesse, Hesse and by Rhine, Saxe-Weimar-Eisenach, Saxe-Meiningen, Saxe-Altenburg, Saxe-Coburg-Gotha, Brunswick, Anhalt-Dessau, Anhalt-Bernburg, Nassau, Schwarzburg-Rudolstadt, Schwarzburg-Sondershausen, Waldeck, Reuss elder branch, Reuss junior branch, Lippe, Hesse-Homburg, Frankfort, Salvador, Schaumburg-Lippe, Spain, Sweden and Norway, Swiss Confederation, Two Sicilies, Württemberg.

Assassination.—Belgium, Dominican Republic, Ecuador, France, Hayti, Italy, Luxemburg, Mexico, Netherlands, Nicaragua, Orange Free State, Ottoman Porte, Peru, Salvador, Spain, Sweden and Norway, Swiss Confederation, Two Sicilies.

Assault with intent to commit murder.—Austria, Baden, Bavaria, Bremen, Great Britain, Hanover, Japan, Mecklenburg-Schwerin, Mecklenburg-Strelitz, Mexico, North German Union, Oldenburg, Prussia and other states, Schaumburg-Lippe, Württemberg.

Attempt to commit murder.—Belgium, Dominican Republic, France, Hayti, Italy, Luxemburg, Netherlands, Orange Free State, Ottoman Porte, Salvador, Spain, Sweden and Norway, Swiss Confederation, Two Sicilies.

Attempt to commit rape.—Belgium, Luxemburg.

Bankruptcy, fraudulent—Peru.

Barratry, fraudulent.—Peru.

Bigamy.—Belgium, Luxemburg, Netherlands, Peru.

Breaking and entering public offices, etc.—Japan, Netherlands, Spain.

Breaking and entering the house of another in the day or night time with intent to commit felony.—Japan.

Burglary.—Belgium, Ecuador, France, Italy, Japan, Luxemburg, Mexico, Netherlands, Nicaragua, Ottoman Porte, Peru, Salvador, Spain, Sweden and Norway.

Counterfeit money, fabrication or circulation of.—Austria, Baden, Bavaria, Belgium, Bremen, Dominican Republic, Ecuador, France, Hanover, Hayti, Italy, Japan, Luxemburg, Mecklenburg-Schwerin, Mecklenburg-Strelitz, Mexico, Netherlands, Nicaragua, North German Union, Oldenburg, Ottoman Porte, Peru, Prussia and other states, Salvador, Schaumburg-Lippe, Spain, Sweden and Norway, Two Sicilies, Württemberg; *and the introduction of or making instruments for the fabrication of*, Mexico.

Counterfeiting bonds, bank-notes, seals, dies, stamps, etc.—Belgium, Ecuador Italy, Japan, Luxemburg, Netherlands, Nicaragua, Ottoman Porte, Peru, Salvador, Spain.

Embezzlement of public money.—Austria, Baden, Bavaria, Bremen, Mecklenburg-Schwerin, Mecklenburg-Strelitz, Mexico, North German Union, Oldenburg, Peru, Prussia and other countries, Schaumburg-Lippe, Württemberg.

Embezzlement of public money by public officers.—Belgium, Dominican Republic, Ecuador, France, Hanover, Hayti, Italy, Japan, Luxemburg, Peru, Netherlands, Nicaragua, Orange Free State, Ottoman Porte, Salvador, Spain, Sweden and Norway, Swiss Confederation, Two Sicilies.

Embezzlement by persons hired or salaried.—Belgium, Dominican Republic, France, Hayti, Italy, Luxemburg, Netherlands, Nicaragua, Orange Free State, Ottoman Porte, Peru, Salvador, Spain, Swiss Confederation.

Explosion, intentional, of mines or steam-boilers, causing severe injuries.—Peru.

Forged paper, utterance of.—Bavaria, Belgium, Bremen, Ecuador, France, Great Britain, Hanover, Hawaiian Islands, Hayti, Italy, Japan, Luxemburg, Mecklenburg-Schwerin, Mecklenburg-Strelitz, Mexico, Netherlands, Nicaragua, North German Union, Oldenburg, Orange Free State, Ottoman Porte, Prussia and other states, Salvador, Schaumburg-Lippe, Spain, Swiss Confederation, Württemberg.

Forgery.—Austria, Baden, Bavaria, Belgium, Bremen, Dominican Republic, Ecuador, France, Great Britain, Hanover, Hawaiian Islands, Hayti, Italy, Japan, Luxemburg, Mecklenburg-Schwerin, Mecklenburg-Strelitz, Mexico, Netherlands, Nicaragua, North German Union, Oldenburg, Orange Free State, Ottoman Porte, Peru, Prussia and other states, Salvador, Schaumburg-Lippe, Spain, Sweden and Norway, Swiss Confederation, Two Sicilies, Württemberg.

Highway robbery.—Peru.

Homicide.—Salvador.

Infanticide.—Belgium, Dominican Republic, Ecuador, France, Hayti, Italy, Luxemburg, Mexico, Netherlands, Nicaragua, Orange Free State, Ottoman Porte, Peru, Salvador, Spain, Sweden and Norway, Swiss Confederation, Two Sicilies.

Kidnapping.—Italy, Mexico, Netherlands, Peru, Spain.

Larceny of goods and chattels of the value of $25 *or upwards.*—Mexico, Spain.

Larceny.—Netherlands, Peru.

Malicious destruction of or attempt to destroy railways, public edifices, etc., when the act endangers human life.—Japan.

Manslaughter.—Netherlands.

Murder.—Austria, Baden, Bavaria, Belgium, Bremen, Dominican Republic, Ecuador, France, Great Britain, Hanover, Hawaiian Islands, Hayti, Italy, Japan, Luxemburg, Mecklenburg-Schwerin, Mecklenburg Strelitz, Mexico, Netherlands, Nicaragua, North German Union, Oldenburg, Orange Free State, Ottoman Porte, Peru, Prussia and other states, Salvador, Schaumburg-Lippe, Spain, Sweden and Norway, Swiss Confederation, Two Sicilies, Württemberg.

Murder, assault with intent to kill, and manslaughter on the high seas, committed on vessels of demanding country.—Japan.

Mutilation.—Mexico.

Mutiny.—Belgium, Ecuador, Italy, Luxemburg, Netherlands, Nicaragua, Ottoman Porte, Peru, Salvador, Spain, Sweden and Norway.

Obtaining by threats or false devices, money, valuables, etc.—Netherlands, Spain.

Parricide.—Belgium, Dominican Republic, Ecuador, France, Hayti, Italy, Luxemburg, Mexico, Netherlands, Nicaragua, Orange Free State, Ottoman Porte, Peru, Salvador, Spain, Sweden and Norway, Swiss Confederation, Two Sicilies.

Perjury, or the subornation of perjury.—Japan.

Piracy.—Austria, Baden, Bavaria, Belgium, Bremen, Dominican Republic, Ecuador, Great Britain, Hanover, Hawaiian Islands, Hayti, Italy, Japan, Luxemburg, Mecklenburg-Schwerin, Mecklenburg-Strelitz, Mexico, Nicaragua, North German Union, Oldenburg, Orange Free State, Ottoman Porte, Peru, Prussia and other states, Salvador, Schaumburg-Lippe, Spain, Sweden and Norway, Swiss Confederation, Two Sicilies, Württemberg.

Poisoning.—Belgium, Dominican Republic, Ecuador, France, Hayti, Italy, Luxemburg, Mexico, Netherlands, Nicaragua, Orange Free State, Ottoman Porte, Peru, Salvador, Spain, Sweden and Norway, Swiss Confederation, Two Sicilies.

Purchasing, knowingly, money, valuables, etc., obtained by false devices.—Netherlands.

Rape.—Belgium, Dominican Republic, Ecuador, France, Hayti, Italy, Japan, Luxemburg, Mexico, Netherlands, Nicaragua, Orange Free State, Ottoman Porte, Peru, Salvador, Spain, Sweden and Norway, Swiss Confederation, Two Sicilies.

Reception of articles obtained by means of one of the crimes specified in the convention.—Belgium, Luxemburg.

Robbery.—Austria, Baden, Bavaria, Belgium, Bremen, Dominican Republic, Ecuador, France, Great Britain, Hanover, Hawaiian Islands, Hayti, Italy, Japan, Luxemburg, Mecklenburg-Schwerin, Mecklenburg-Strelitz, Mexico, Netherlands, Nicaragua, North German Union, Oldenburg, Orange Free State, Ottoman Porte, Peru, Prussia and other states, Salvador, Schaumburg-Lippe, Spain, Sweden and Norway, Swiss Confederation, Two Sicilies, Württemberg.

Slave trade.—Spain.

Vessels, intentional destruction or loss of.—Netherlands, Spain.

Wilful and unlawful destruction or obstruction of railroads.—Belgium, Luxemburg, Netherlands, Peru.

Wilful injuries to telegraph lines.—Peru.

Appendix C.

PRACTICE IN VARIOUS COUNTRIES.

In November, 1888, the Department of State instructed the ministers of the United States to make reports upon the practice of extradition in the countries in which they respectively resided. The following information touching practice in foreign countries is taken partly from those reports and partly from other sources. The circular was as follows:

You are instructed to make at an early day a report on the subject of international extradition, as practiced by the Government to which you are accredited.

Your report need not be confined to answers to specific questions, since it would be impossible for the Department to anticipate all the matters which you may find pertinent. But, for your guidance as to the character of the report desired, the following inquiries are suggested:

1. Does the Government to which you are accredited extradite in the absence of a conventional obligation? If so, upon what conditions? Is reciprocity required, or is the matter in the absolute discretion of the Government?

2. Is provisional arrest and detention of a fugitive granted pending the reception of a formal requisition for surrender, accompanied with the evidences of crime relied upon to obtain extradition? If so, what steps must be taken by the demanding Government and its agents to secure such arrest and detention? Is a diplomatic requisition therefor necessary; and, if so, what must it contain? How long can the fugitive be provisionally detained? Can provisional arrest and detention be obtained upon telegraphic information?

3. By what authority are warrants of arrest issued? If a warrant for provisional arrest has been issued, is a new warrant required after receipt of formal requisition? Must complaint be made, and if so by whom, before judicial authorities, to secure arrest and detention in either case? Can arrest be secured on complaint before judicial authorities without prior application to the Executive? If arrest be so obtained, must the matter be brought before the Executive to secure detention?

4. How is the charge against the fugitive examined, and what is the course of the examination? Do the judicial authorities take any part in it? If so, what; and what report or finding do they make? To whom is it made, and to what extent is it binding on the Executive? Must papers be submitted to the Executive before they are presented to the judicial authorities, and by whom must this be done?

5. In what form are papers required to be authenticated?

6. How is the question of extradition finally decided, and in what form is notice of the decision given to the demanding Government?

7. How is seizure of property or effects of a fugitive secured? And are they delivered to the demanding Government?

8. When and where is a fugitive, whose extradition has been granted, delivered to the authorities of the demanding Government? Is such delivery made at the place where the fugitive is detained, or at the frontier? How soon must the fugitive be taken out of the country after his extradition has been granted?

9. Is a right of transit across its territory of criminals surrendered by a third state to a foreign Government conceded by the Government to which you are accredited? If so, on what conditions and in whose custody is the fugitive conducted across such territory?

10. What is the rule of the Government in respect to the payment of expenses?

You are instructed to forward to the Department, with your report, duplicate copies of the law of ———, if any, on the subject of extradition. And in making your report you will take into consideration how far this law may furnish a definite answer to the questions above stated. The Department desires full information on the points suggested, but does not wish your written report to be unnecessarily amplified.

ARGENTINE REPUBLIC.

April 10, 1889, Mr. Hanna inclosed to the Department a translation of the articles of the criminal code of the Argentine Republic of October 17, 1888, relating to extradition, and a list of the country's treaties on the same subject.

[Inclosure 1.—Translation.]

Mode of procedure of the Argentine Government in cases concerning extradition.

ART. 646. The extradition of criminals, whether asked for by the Republic or granted at the request of another nation, is allowed only—

(1) In cases determined by existing treaties.

(2) In the absence of treaties, in those cases in which extradition may be allowed according to the principle of reciprocity or the uniform practice of nations.

ART. 647. The judge having jurisdiction in the cause against a criminal absent in a foreign country shall alone be competent to take cognizance of the matter of his extradition.

In case it is asked for by a foreign Government, the judge presiding in the district where the person required lives shall have jurisdiction.

ART. 648. Provided there is a treaty, extradition will be asked for or conceded, according to the manner and conditions therein prescribed.

If there is no treaty, extradition shall be asked for or conceded through the diplomatic channel, according to the procedure and conditions established in this Code.

ART. 649. The judge who may have jurisdiction in the cause will ex-officio, or at the instance of the party concerned, by decision based on legal principles, grant and demand the extradition from the moment in which on account of the state of the process and its result, the extradition should be allowed.

ART. 650. Appeal may be taken from the decision by which the extradition is either granted or refused, should such decree be made by a judge of an inferior court.

ART. 651. The letter or communication asking for extradition, whether by authorities of this country or by those of another, must be accompanied by an authenticated transcript of the decision requiring such proceeding, and also by the following documents:

(1) The sentence of conviction according to the form prescribed by law, if the person claimed shall already have been convicted, or the warrant of arrest issued by the competent courts, with the exact designation and the date of the commission of the crime or offense, if the person has been indicted or is resting under suspicion. Said papers will be forwarded in original or in authenticated copies.

(2) All data and antecedents necessary to prove the identity of the person whose extradition is demanded.

(3) An authenticated copy of the legal provisions applicable to the offense with which the person is charged, according to the law of the respective country.

ART. 652. When the demand of extradition is not authorized by treaty, the national executive power, after taking the opinion of the Attorney-General, will determine what is proper to be done. Should the decision be adverse to the extradition, the requisition will be returned to the Government or to the judge by whom it was issued, accompanied by a copy of the Attorney-General's opinion and of the decision made.

In case the application is favorably received, the Government will forthwith communicate with the judge of the district wherein the refugee is, accompanied by all the antecedents, and notice shall be given to the foreign Government interested. When extradition is asked for by judges of the Republic, the national executive power will direct a corresponding letter to the Government of the nation where the refugee is, and will so advise the judge asking for the extradition.

ART. 653. The request for extradition having been passed to that judge of the Republic who is to take cognizance of the case, he will order the detention of the refugee and give him a hearing within forty-eight hours, for the purpose of proving his identity, placing him at liberty immediately, if it is found that proceedings were taken against him erroneously.

ART. 654. If the identity of the person is established by proof, prima facie at least, he must be notified to name qualified counsel for his defense in the period of three days, it being the duty of the judge to do this, if the accused refuses to do so in the time specified.

ART. 655. In the argument concerning the application for extradition, it will not be permitted to traverse the intrinsic validity of the documents

produced by the demanding Government, the determination being limited to the following points:

(1) Identity of the person.

(2) Examination of the extrinsic forms of the documents produced.

(3) Whether the crime or offense is embraced in either of the cases mentioned in Article 646.

(4) Whether the penalty adduced belongs to the category of penalties which, by the laws of the demanding country, correspond to the crime or offense in question.

(5) Whether the penal action or corresponding penalty is prescribed according to the laws of the demanding country.

(6) Whether the decision or warrant of arrest, as the case may be, emanates from the competent courts of the demanding country.

ART. 656. The counsel of the person claimed shall have six days to present his defense, which the district attorney, who will necessarily be a party in every case relating to extradition, shall be allowed to hold six days for examination.

ART. 657. If there be necessity to prove any facts, the case shall be received for evidence, and with regard to this, and to the procedure, the provisions of this Code will determine.

ART. 658. At the end of the time allowed for proof, the judge, with the pleadings before him, shall decide within ten days, and will declare whether there is or is not ground for granting the extradition.

ART. 659. An appeal from the decision of the judge of the section may be made to the Supreme Court, which will briefly and definitely determine the matter, after taking the opinion of the Attorney-General. The original papers will be passed to the minister for foreign affairs, retaining a sufficient record thereof, and said determination will be forwarded to the demanding Government.

ART. 660. No criminal extradited shall be tried for an offense prior to that for which his extradition was asked.

If on account of an offense committed previously to the order of extradition, but discovered subsequently thereto, authorization should be asked to prosecute the person already surrendered, the demand, which shall be accompanied by the papers relating to the process, in which shall be contained the statement of the person accused or a declaration signed by him that he has no statement to make, shall be submitted to the judge of section, before whom the demand for his extradition shall have come, and from his decision there shall be no appeal.

ART. 661. The Argentine Government may authorize the transit, through the territory of the Republic, of a person surrendered who is not an Argentine citizen, without any further requirement than the presentation, through the diplomatic channel, of the sentence, whereby he has been condemned or the warrant issued for his arrest.

ART. 662. The courts empowered to determine extradition cases will also have authority to determine whether papers and other things found on the person of the presumed offender shall be given up to the demanding Government either wholly or in part.

ART. 663. Letters rogatory, issued by a competent foreign magistrate in a criminal matter not of a political character, shall be presented through

the diplomatic channel, and shall be transmitted to the competent judicial authorities.

ART. 664. In urgent cases they can be transmitted directly to the Argentine authorities, who must act without delay, provided they are not in conflict with the laws of the Republic.

ART. 665. Citations in a criminal matter not of a political character, of witnesses domiciled or residing in the Republic, shall not be admitted and notice thereof shall not be given them, save on condition that such witnesses shall not be prosecuted nor imprisoned on account of previous acts or convictions, or as accomplices in the offense then brought to trial.

ART. 666. If the person asked for is on trial, or is convicted for a crime or offense committed in the Republic, extradition shall be deferred until the trial is finished or the penalty satisfied.

ART. 667. When, for the offense which prompts the demand for extradition, there is a lighter penalty in the Republic, the accused person shall not be extradited, save on condition that the courts of the country which claims him shall impose on him the lighter penalty.

ART. 668. If the offender is demanded by more than one state at the same time, preference shall be given to that state in which the greatest offense was committed, and, in case of equal offense, to that state which first asked for him.

ART. 669. If the criminal is an Argentine citizen, and elects to be judged by the Argentine courts, the Government of the demanding nation may furnish to said courts all the antecedents and proofs of the offense, in order that he may be tried according to the laws of the Republic.

ART. 670. The delivery of all the effects which the accused may have stolen in a foreign country, and which were found in his possession at the time of his arrest, and the things which may serve as proof of the offense of which he is charged, shall of course be included in the writ of extradition.

ART. 671. In case of urgency, the courts of the Republic may order the preliminary arrest of a foreigner in compliance with the direct request of the judicial authorities of a country having an extradition treaty with the Republic, provided that the existence of a sentence, or of a warrant of arrest be established, and provided the nature of the crime for which the person in question has been sentenced or is pursued be clearly determined.

The demand may be made by mail or telegraph, and at the same time notice shall be given through the diplomatic channel to the minister for foreign affairs.

The courts that have caused the arrest to be made shall immediately give notice thereof to the minister for foreign affairs, through the minister of justice.

ART. 672. A foreigner arrested by virtue of the provisions of the foregoing article shall be immediately released, if within the period of fifteen days, when the country concerned is one bordering on the Republic, and of one month and a half in the case of all other countries, the Argentine Government shall not receive in due form the demand, through the diplomatic channel, for extradition.

ART. 673. The preliminary arrest of a foreigner may likewise be ordered at the request of a diplomatic officer, pending the arrival of the papers

necessary to be presented with the demand for extradition, and the provisions of the two foregoing articles shall be applicable to these cases.

ART. 674. Every foreigner arrested by virtue of a demand for extradition may ask for his provisional liberty, under bail, upon the same conditions as if the offense charged had been committed in the Republic. (See "Codigo de Procedimientos en lo Criminal," pp. 216–225 inclusive.)

[Inclosure 2.]

Statement showing page and volume of Argentine treaties touching extradition. (Coleccion de Tratados de la Republica Argentina.)

Country.	Volume.	Page.	Country.	Volume.	Page.
Chile	1	415, 416	Uruguay	2	243–246
Do	2	316–321	Italy	2	282–294
Brazil	1	544–552	Paraguay	3	99–109
Do	2	324–342	Portugal	3	238–254
Bolivia	1	571, 572	Spain	3	272–280
Do	2	218–221 303–307			

AUSTRIA-HUNGARY.

Three reports have been received from the legation of the United States at Vienna. The first, by Mr. Lawton, of January 30, 1889, contains the following passages:

The Austrian Government has not, up to the present time, as far as known to this legation, seen fit to enact any special laws in regard to the question of extradition beyond the short extracts from the "Strafgesetz" and "Strafgesetz Ordnung" enclosed herein. Such precedents and customs as exist are based on the prevailing law of the Empire, and are, in each particular case, carried out in accordance with the provisions of the treaty existing between Austria-Hungary and the power making request for extradition.

These treaties are fairly uniform in character, though those concluded many years ago are necessarily less complete and precise than those of later date. Especially may this be noticed as to the existing treaty between the United States and Austria-Hungary, concluded July 3, 1856. Many important provisions, such as additional crimes for which extradition can be granted, the apprehension of fugitives by telegraph, delivery of articles seized in possession of the person to be surrendered, payment of the expenses of extradition, transportation across territory of a fugitive surrendered by a third power, etc., are entirely omitted in this treaty with the United States; and in addition it appears to lack the clearness of those more recently concluded.

The treaties between Austria-Hungary and England (16th April, 1874), Belgium (12th January, 1881), and Brazil (21st May, 1883) are the most full and complete, as well as the latest, negotiated.

As by the instructions of the Department circular I am directed to take into consideration how far the documents forwarded furnish a definite

answer to the questions asked, and as a perusal of the treaties above mentioned will give full information on nearly all the points desired, I confine myself, therefore, in this report, to questions which are not covered by the treaties, and to additional miscellaneous information relating to the subject.

From information obtained through the ministry of foreign affairs, it has been ascertained that the Austro-Hungarian Government will grant extradition in the absence of a conventional obligation, in accordance with the practice of the prevailing law of Austria and Hungary.

Extradition under such circumstances must, however, be reciprocal.

I am informed, that upon a report being made by the judicial authorities to the minister of justice, stating whether extradition should or should not be granted, such minister, after approving or disapproving the finding of the lower courts, communicates in turn his decision to the imperial and royal ministry of foreign affairs.

The decision of the minister of justice is understood to be final, unless the ministry of foreign affairs should show that it is not in accordance with the particular treaty under which proceedings are taken.

The question of extradition is finally decided by the minister of justice, after receiving a report of the decisions of the lower courts. He in turn forwards his decision to the minister of foreign affairs for transmission, diplomatically, to the demanding state.

Extradition will not be granted—

(1) For political offences, always excepting attempts on the life of the sovereign or members of his family.

(2) For crimes which have become outlawed.

(3) When the fugitive has been prosecuted and acquitted in the state from which extradition is asked, for the same crime which has led to a demand for his extradition.

(4) When the offence, committed outside of the state from which extradition is requested, does not, according to the laws of both the contracting states, involve a punishment of a year's imprisonment or more.

(5) Nor will a fugitive be kept in arrest in the state to which he has been surrendered on account of another previous crime, nor on any other grounds than those of his surrender, unless such person has, after his surrender, had ample opportunity of returning to the country whence he was surrendered.

Extradition will take place: For participation in crimes as accessory either before or after the fact, provided such participation be punishable by the laws of both contracting countries.

If an individual whose extradition is demanded be also claimed by one or several other powers on account of other crimes committed in their territory, he shall be surrendered to the Government in whose territory his greatest crime was committed, and if his crimes were all of the same gravity, or a doubt exists as to which is the greatest, to the Government which first made application for his surrender.

No requisition for a surrender can be based on a conviction "*in contumaciam.*"

The extradition shall not take place before the expiration of fifteen days from the apprehension.

Requisitions should contain full description of the fugitive, and all information which may assist in his identification.

In case any doubt should arise as to the offence coming under the head of those mentioned in a convention, explanation will be asked for, and after due examination, the state from whom extradition is requested will decide whether it shall be granted.

The second report, also by Mr. Lawton, bears date February 30, 1889, and inclosed: (1) A translation of a note from the ministry of foreign affairs; (2) translation of rules governing extradition of criminals in the Kingdom of Hungary:

[Inclosure 1—Translation.]

Mr. Pasetti to Mr. Lawton.

VIENNA, *February* 2, 1889.

In the note of December 18th last, the envoy extraordinary and minister plenipotentiary of the United States of America, Mr. A. R. Lawton, was pleased to communicate to the imperial and royal ministry of foreign affairs his desire to obtain information relative to the extradition of criminals in Austria-Hungary, and the laws and treaties pertaining to the same.

The ministry of foreign affairs thereupon immediately placed itself in correspondence with the ministeries of justice at Vienna and Budapesth, and now begs to transmit to the honorable envoy the desired information.

As regards the kingdoms and countries represented in the Reichsrath, the ministry of foreign affairs begs to place at the disposal of the honorable envoy the accompanying pamphlet containing the provisions of the criminal law in force in the Austrian part of the empire; the proceedings relating to extradition; the decrees promulgated and the treaties concluded up to the year 1885.

Of the treaties at present in force, the only one not contained in the above mentioned pamphlet is the one concluded with the principality of Monaco, as its ratification took place immediately after publication of the volume, and copy of which has, as intimated in the esteemed note, probably already been procured at the imperial printing office.

The ministry of foreign affairs furthermore begs to direct the attention of the honorable envoy to the fact that no formal extradition treaties exist with Denmark, Portugal, Turkey, Greece, and Roumania.

A mutual understanding, however, in regard to the extradition of criminals, has established itself by custom between Austria and Hungary on the one part and Turkey on the other. Extradition being thereby sanctioned (on condition of reciprocity) from Austria-Hungary to Turkey, unless the criminal be a Christian, and *vice versa* unless he belong to the Mohammedan faith.

The laws governing the extradition of criminals in the countries of the Hungarian crown are given in the accompanying statement.

The ministry of foreign affairs finally begs to remark that this statement contains the answers to the questions which the honorable envoy had previously addressed to this ministry. It will, however, in due course,

transmit any supplementary communication which may be received from the imperial royal ministries of justice at a later date.

The undersigned avails, etc.

For the minister of foreign affairs and imperial household,

M. PASETTI.

[Inclosure 2—Translation.]

Principles ruling the extradition of criminals in Hungary.

The principles ruling the extradition of criminals are found partly in the criminal laws and treaties concluded with foreign powers, partly also in decisions and decrees of the minister of justice and of courts of law, rendered in special cases, and which have become precedents.

The provisions of treaties are imperatively binding upon States with whom such treaties have been concluded.

In consequence of Article III of the treaty of September 20th, 1870, relating to the naturalization of emigrants, the provisions of the extradition treaty of July 3rd, 1856, between Austria-Hungary and the United States are especially binding.

No special law of extradition exists in Hungary. A few provisions governing the same are contained in the criminal laws. According to Article V of the law of 1878, paragraph 17, a Hungarian subject can never be surrendered to the authorities of a foreign state. Subjects of other parts of the Empire can only be surrendered to their own state authorities. Paragraph 14 of Article XI of the law of 1879 provides that no extradition can be granted for a simple misdemeanor.

As regards civilized nations, in the case of a demand for extradition where no treaty exists, on the assurance of reciprocity being given, the general rules as to extradition will be applied as contained in the treaties most recently negotiated with other states.

Proceedings in matters of extradition are usually taken by the courts (and always when treaties so provide) on motion of the attorney-general during the confinement of the fugitive. The judge then questions the prisoner and carries on the further official examination as speedily as practicable. After the close of the examination the attorney-general makes a motion based on the merits of the case and the court gives its decision. The latter is officially submitted to the minister of justice, who, after due deliberation, gives a final decision respecting extradition.

This decision is brought to the knowledge of the state asking for extradition through diplomatic channels.

The third report, made by Mr. Grant, bears date August 16, 1889, and incloses a translation of a note from the Austro-Hungarian Ministry of Foreign Affairs, which is as follows:

[Inclosure—Translation.]

Mr. Pasetti to Mr. Grant.

VIENNA, *August* 10, 1889.

In the note of February 2, 1889, the Imperial Royal Ministry of Foreign Affairs had the honor of transmitting to the honorable Envoy Extra-

ordinary and Minister Plenipotentiary of the United States of America, Frederick D. Grant, a collection of all the laws, regulations, and treaties governing the extradition of criminals in Austria-Hungary, with the information that a supplement, furnishing additional answers to various questions asked, would be sent as soon as received from the Imperial Royal ministry of justice. The ministry of foreign affairs now begs leave to enclose herewith to the honorable Envoy of the United States the information subsequently obtained.

The first question: "Does the government extradite in the absence of a conventional obligation?" is answered in paragraphs 39, 40, and 41 of the criminal law, according to which the granting of extradition is by no means dependent upon the existence of a treaty stipulating the same.

In case a treaty exists with a state, the question depends upon its provisions, as there are some treaties where it is specially provided that extradition will be granted only in case of transgressions specified.

If the treaty has no special provisions, the answer will depend upon the manner in which paragraphs 39 and 40 of the criminal law are construed.

Whenever any difference of opinion has arisen upon this point and it has been claimed that extradition, although not provided for by a treaty with the government making the demand, should be granted, nevertheless, under paragraph 39 of the criminal code, the rule adopted has been that the said paragraph 39 is inapplicable to such cases within the meaning of paragraph 41 of the criminal code, in conformity to which procedure is regulated where special treaties exist with foreign states for the reciprocal extradition of criminals. There exists no obligation to surrender criminals to states with which no extradition treaty exists.

This practice has been followed constantly and for a long number of years by the Imperial Royal ministry of justice, which has jurisdiction of all proceedings connected with extradition.

In view of this practice the next two questions, 2 and 3, can be answered only as far as regards states with which no treaty exists.

The second question: "Under what conditions will extradition be granted?" is answered by paragraphs 38 and 39 of the criminal law, under paragraph 59 of the code of criminal procedure.

Only foreigners can be surrendered. Persons who were formerly such, and have acquired Austrian or Hungarian citizenship afterwards, or after committing the crime, can not be surrendered.

Whether a person can be surrendered, who at the time of the perpetration of the crime abroad was an Austrian or Hungarian citizen, and became a foreigner afterwards, must be regarded as an open question.

Extradition takes place only for offences committed abroad; if the offence was partly committed in Austria-Hungary no extradition is granted.

If a foreigner has committed high treason against Austria-Hungary, or has counterfeited Austrian money or securities, no extradition is granted.

Extradition takes place only for crimes punishable according to the criminal law of Austria, but not for simple misdemeanors or transgressions. Political acts committed abroad, if not punishable by the criminal laws of Austria, can by no means constitute ground for extradition.

Extradition for political offences or actions connected therewith, is regularly refused for reasons stated in most of the extradition treaties, al-

though the laws contain nothing positive on that point. An attempt on the life of the chief of a foreign state, or a member of his family, if constituting murder, assassination, or poisoning, is not regarded as a political crime, but will be treated as an act connected with such crime.

The act being liable to punishment, according to Austrian law, extradition will not be granted if said punishment, according to Austrian law, has become barred by statutory limitation, or if reasons exist for exemption from punishment.

Although paragraph 39 of the criminal law expressly provides that extradition is to be made to the state in which the crime was committed, and that to this state the preference is undoubtedly to be given, yet constant practice and common consent permit the surrender to be made also to another state, provided the latter be competent to prosecute, according to the general conditions of competency, and especially to that state of which the fugitive is subject.

Paragraph 59 of the code of criminal procedure provides that the foreign authorities, who demand the extradition, shall immediately or within proper time, produce such evidence as the accused at the time of his arrest could not overcome.

As regards the question: "Is reciprocity required, or is the matter in the absolute discretion of the Government?" it must be observed that reciprocity in the granting of extradition is always expected; that several instances are known where, in case of doubt, inquiry was first made before it was granted, and that the Imperial Royal ministry of justice holds that in the absence of reciprocity, surrender is not to be granted on the ground of general international principles.

The fourth and last question is: "How is the question of extradition finally decided, and in what form is notice of the decision given to the demanding government?"

The first part of the question is fully answered in paragraph 59 of the code of criminal procedure, the provisions of which must be consulted.

The second part of the question can only be answered by saying that no certain rules exist, but that in cases where diplomatic requisition is demanded the ministry of justice communicates through the ministry of foreign affairs with the diplomatic representative of the Government which demands extradition, and that in the few rare instances where Austrian courts of justice had to communicate directly with foreign authorities, it was the duty of the court having immediate charge of the extradition case to inform the foreign authority of the decision.

The undersigned avails, etc.,

For the minister of foreign affairs.

M. PASETTI.

BELGIUM.

From Belgium two reports have been received. The first, dated January 25, 1889, is from Mr. Parkhurst. It encloses a translation of a note from the Prince de Chimay, minister for foreign affairs, of January 19, 1889, which is as follows:

Mr. MINISTER: By letter of the 3d of this month, your excellency kindly proposed to me different questions concerning the practice of extradition in Belgium. I have the honor to respond to your excellency in the order that the questions have been proposed.

1. The Belgian Government does not authorize extradition except in virtue of treaties concluded by application of the law of the 15th March, 1874; reciprocity is a legal condition, and its own citizens can never be surrendered.

2. Provisional arrest and detention are made pending the reception of an explicit requisition for surrender on the conditions in the concluded treaties.

As a principle, requisitions must contain the declarations required by the treaty governing the case. The detention can be maintained during 15 days if the arrest has been demanded by a country bordering on Belgium, during three weeks if the country does not border on Belgium, during three months if the applying country is out of Europe.

Besides this, regard must be had to the conventional provisions, which, however, may not be contrary to the law.

Provisional arrest can be obtained upon telegraphic information. Although most of the conventions require that telegraphic information should be transmitted through the diplomatic channels, *as a matter of fact*, the judicial authorities sometimes deviate from the rigor of the principles.

3. The warrant for provisional arrest [article 5 of the law of 15 March, 1874] is issued by the magistrate of the place of residence of the individual whose surrender is demanded, or of the place where he may be found. The warrant for arrest delivered by the demanding party accompanying the request for extradition is made executory by the chamber of council of the tribunal of first instance. [Art. 3, Sec. 2.]

A complaint lodged by an individual against a foreigner, fugitive in Belgium, can not have the effect of his extradition to the Government to which he belongs.

When arrest has been made the demand for extradition is expected, subject to the delays heretofore indicated.

4. The diplomatic and consular agents have to transmit the demands for extradition to the ministry of foreign affairs, which, on its part, communicates the same immediately to the minister of justice. In what concerns the other points, I take leave to call the attention of your excellency to article 3, sections 3, 4, 5, and 6 of the law of 15 March, 1874.

The opinion expressed by the chamber of prosecution does not conclusively bind the Government, which, in spite of this opinion, may authorize the surrender.

5. The signature of the foreign authority which has made authentic the papers transmitted in support of the demand for extradition must also

have been authenticated by the representative of the foreign country in Belgium.

6. The final decision on the matter of extradition is taken by the minister of justice and communicated to the foreign agent by the minister of foreign affairs.

7. This question is legally resolved by articles 5 and 6 of the law, and, for the most part, conventionally.

8. The individual whose extradition has been granted is delivered to the foreign agents at the extreme frontier.

In what concerns the delay under which the fugitive must be taken out of the country, this is regulated by the conventional dispositions. The extradition is made as soon as possible.

9. The matter of transit is regulated by article 4 of the law of 15 March, 1874.

Most of the treaties concluded by Belgium contain an analogous disposition. The individual conducted across the country is escorted by the Belgian authorities. Transit is altogether subordinated to the following conditions:

1st. That a native is not in question.

2nd. That prescription does not exist.

3rd. That the charged offenses are not of a political character.

4th. That the requesting Government should produce a document that can serve to base an ordinary extradition.

10. Belgium bears the expense occasioned by the arrest, the detention, and the carrying to the frontier of the individuals whose surrender is demanded.

The transit expenses of those conducted across the Belgian territory are charged to the State which has demanded the transit.

In obedience to the desire expressed by your excellency, I have the honor to transmit under this cover three copies of a pamphlet containing all the legal dispositions relative to extradition and to matters referring to the same, also the treaties concluded by Belgium. Your excellency will find also under this cover the other treaties concluded since the publication of the pamphlet in question.

Please accept, etc.,

LE PRINCE DE CHIMAY.

[Inclosure.—Translation.]

Ministry of justice.—Extradition law.

Leopold II, King of the Belgians, to all to whom these presents shall come, greeting:

The chambers have adopted and we sanction the following:

ARTICLE 1. The government may deliver up to the governments of foreign countries, on condition of reciprocity, any foreigner who is under prosecution or accusation, or who has been sentenced by the courts of said countries as principal or accessory, for one of the acts hereinafter enumerated committed within their territory:

1st. For assassination, poisoning, parricide, infanticide, murder, violation of the person.

2d. For arson.

3d. For counterfeiting of public bills or bank-notes, of public or private bonds; issuing or placing in circulation of such counterfeit bills, notes, or bonds; forgery in documents or in telegraphic dispatches, and use of such counterfeit dispatches, bills, notes, or bonds.

4th. For false coinage, including the counterfeiting and alteration of coins, the issuing and placing in circulation of counterfeit or altered coin, and also frauds in the choice of samples for the verification of the title and weight of coins.

5th. For false testimony, and false declarations of experts or interpreters.

6th. For theft, swindling, peculation, or embezzlement committed by public functionaries.

7th. For fraudulent bankruptcy, and frauds committed in failures.

8th. For association of evil-doers.

9th. For threats to commit such acts of violence against the person or property as subject their perpetrator to the penalty of death, compulsory labor, or reclusion.

10th. For abortion.

11th. For bigamy.

12. For attempts against individual liberty and the inviolability of the domicil, committed by private persons.

13th. For kidnapping, concealment, withholding, or substitution of an infant.

14th. For exposure or abandonment of an infant.

15th. For kidnapping of minors.

16th. For an attempt against chastity, with violence.

17th. For an attempt against chastity, committed without violence, on the person or by the aid of the person of a child of either sex less than fourteen years of age.

18th. For an offense against good morals by exciting, facilitating, or favoring habitually, in order to gratify the passions of others, lewdness or corruption in minors of either sex.

19th. For blows given or wounds inflicted voluntarily, with premeditation, or having caused an apparently incurable malady, permanent incapacity for personal labor, loss of the full use of an organ, a severe mutilation, or death, although caused unintentionally.

20th. For breach of trust and deception.

21st. For subornation of witnesses, experts, or interpreters.

22d. For false swearing.

23d. For counterfeiting of seals, stamps, punches, and marks, use of counterfeit seals, stamps, punches, and marks, and unlawful use of genuine seals, stamps, punches, and marks.

24th. For bribery of public functionaries.

25th. For destruction of buildings, steam-engines, or telegraphic apparatus, destruction or defacing of tombstones, monuments, objects of art, documents or other papers, destruction or injury of wares, merchandise or other movable property, and opposition to the execution of public works.

26th. For destruction and devastation of harvests, plants, trees, or grafts.

27th. For destruction of agricultural instruments, destruction or poisoning of cattle or other animals.

28th. For abandonment by a captain, except in the cases provided for by law, of a merchant or fishing vessel.

29th. For running aground, loss, or destruction by the captain or the officers and crew; unlawful appropriation, by the captain of a ship or of a merchant or fishing vessel; throwing overboard or unnecessary destruction of the whole or any part of the cargo, of the stores or appurtenances of the vessel; steering a false course; unnecessary borrowing and pledging as security the vessel itself, or the stores or fixtures thereof, the mortgage or sale of goods or stores, or entry in the accounts of fictitious damages or expenditures; sale of the vessel without special authorization, except in the case of unseaworthiness; discharge of cargo without previous report, except in the case of imminent peril; theft committed on board; adulteration of stores or goods committed on board by the admixture of deleterious substances; attack upon, or forcible and violent resistance to, the captain by more than one-third of the crew; refusal to obey the orders of the captain or officer in command, for the safety of the vessel or cargo, with blows and wounds; plotting against the safety, the liberty or the authority of the captain; seizure of the vessel by the seamen or passengers by fraud or violence toward the captain.

30th. For receiving and concealment of goods obtained by means of any of the crimes or offenses provided for by this law.

The attempt, when punishable according to the penal laws, is included in the foregoing.

ART. 2. Nevertheless, when the crime or the offense giving rise to the demand for extradition shall have been committed outside of the territory of the party making the demand, the government may surrender, on condition of reciprocity, a foreigner who is under prosecution or sentence, in cases in which the Belgian law authorizes prosecution for the same offenses committed outside of the kingdom.

ART. 3. Extradition shall be granted on the production of the original or of an authenticated copy of the sentence or writ of condemnation, or of the order of the council chamber, of the order of the chamber of indictments, or of the writ of criminal procedure, issued by a competent judge, formally decreeing the transfer of the accused to repressive jurisdiction.

It shall likewise be granted on the production of the warrant of arrest, or of any other instrument having the same force, issued by the competent authority in a foreign country, provided such instruments contain a precise statement of the offense for which they were issued, and that they be rendered executory by the council chamber of the court of first instance of the foreigner's place of residence in Belgium, or of the place where he may have been found.

As soon as a foreigner shall have been imprisoned, according to one of the above-mentioned instruments, of the nature of which he shall be duly informed, the government shall receive the opinion of the chamber of indictments of the court of appeals in whose jurisdiction the foreigner shall have been arrested.

The hearing shall be public, unless the foreigner shall request that it may be conducted with closed doors.

The public ministry and the foreigner shall be heard. The latter may enjoy the benefit of counsel.

Within a fortnight after the reception of the documents they shall be referred, with an opinion for which the grounds shall be stated, to the minister of justice.

ART. 4. Extradition by way of transit across Belgian territory may, nevertheless, be granted without having received the opinion of the chamber of indictments, on the simple production of the original or of an authenticated copy of one of the instruments of procedure mentioned in the foregoing article, when it shall have been requested for a state with which Belgium has a treaty comprising the offense which gives rise to the demand for extradition, and when it shall not be interdicted by article 6 of the law of October 1, 1833, and article 7 of this law.

ART. 5. In an urgent case, a foreigner may be arrested, provisionally, in Belgium for any of the offenses mentioned in article 1, on the exhibition of a warrant of arrest issued by the examining magistrate of his place of residence or of the place where he may be found, and based upon an official notice given to the Belgian authorities by the authorities of the country in which the foreigner shall have been sentenced or prosecuted.

Nevertheless, in such a case, he shall be set at liberty if, within fifteen days from the time of his arrest, when such arrest shall have been made at the request of the government of a country bordering on Belgium, and within three weeks, if at the request of the government of a distant country, no communication is received of the warrant of arrest issued by the competent foreign authorities.

This delay may be extended to three months if the country making the demand for extradition is not in Europe.

After the order of arrest the examining magistrate is authorized to proceed according to the rules prescribed by articles 87 to 90 of the code of criminal examination.

A foreigner may claim provisional liberty in cases in which a Belgian would enjoy such liberty, and on the same conditions. The request shall be submitted to the council chamber.

The council chamber shall likewise decide, after having heard the foreigner, whether it is or is not proper to transmit, either in whole or in part, the papers and other objects seized, to the government making the demand for extradition. It shall order the restoration of the papers and other objects having no direct connection with the offense with which the accused is charged, and, the case arising, shall decide upon the claims of third parties appearing as claimants.

ART. 6. Treaties concluded in virtue of this law shall be published in the Moniteur; they can not be put into execution until after the expiration of ten days from the date of that journal.

ART. 7. Extradition can not be granted, if, since the commission of the act with which the prisoner stands charged, or since his prosecution or sentence, such a length of time has elapsed that the term of his liability to punishment has, according to the laws of Belgium, expired by limitation.

ART. 8. Articles 2 and 3 of the law of December 30, 1836, concerning the repression of crimes and offenses committed by Belgians in foreign countries, are applicable to the offenses provided for by article 1 of this law.

ART. 9. They are likewise applicable to infractions in rural matters and in matters of forestry and fishing.

ART. 10. A foreigner who, after having committed, outside of the territory of the kingdom, one of the offenses provided for by article 1 of the law of December 30, 1836, and by articles 1 and 9 of this law, shall acquire or recover the character of a Belgian subject, may, if he be in Belgium, be prosecuted, tried, and punished there according to the laws of the kingdom, within the limits fixed by the said law of December 30, 1836.

ART. 11. Letters rogatory, issued by the competent authorities of a foreign country, and requesting either a domiciliary visit or the seizure of the *corpus delicti*, or of objects which will establish the guilt of the accused, can only be executed in Belgium for one of the acts enumerated in article 1 of this law.

Except in the case provided for by article 5, such letters shall first be rendered executory by the council chamber of the tribunal of first instance of the place where the search and seizure are to be made.

The council chamber shall likewise decide whether it is proper to transmit, in whole or in part, the papers and other articles seized to the government making the demand.

It shall order the restoration of the papers or other articles having no direct connection with the offense with which the accused stands charged, and shall decide the case arising upon the claim of any third parties who may appear as claimants.

ART. 12. The law of April 5, 1868, that of June 1, 1870, together with all the provisions of the law of October 1, 1833, with the exception of article 6, are hereby repealed.

The words "according to the laws of April 5, 1868, and of June 1, 1870," shall be stricken out of article 1 of the law of July 17, 1871, in relation to foreigners.

We promulgate this law, and order that the seal of the state be affixed to it, and that it be published in the Moniteur.

Done at Brussels, March 15, 1874.

LEOPOLD.

By the King:

T. DE LANTSHEERE,
Minister of Justice.

Sealed with the seal of the state.

T. DE LANTSHEERE,
Minister of Justice.

The second report, dated July 13, 1889, from Mr. Terrell, contains the following enclosure:

[Translation.]

Law making modifications in the law of extradition.

Leopold II, King of the Belgians, to all present and to come, greeting:

The Chambers have adopted and we sanction the following:

ART. I. The section 2 of article 5 of the law of the 15th of March, 1874, is modified as follows:

"However, in that case, he" (referring to the party arrested) "will be set at liberty if, within the delay of three weeks dating from his arrest, he does not receive communication of the warrant of arrest delivered by the competent foreign authority."

ART. II. The following provision will be inserted after article 5 of the aforesaid law, and will form article 5 *bis:*

"When the foreigner reclaimed is found on a Belgian vessel which has left the territorial waters, the investigating judge of the district to which the port of departure belongs may issue the provisional warrant of arrest provided for by section 1 of the preceding article, and take, with the authorization of the minister of justice, the necessary steps in order that the existence of the warrant may be brought to the knowledge of the captain, either directly or by means of a consul."

"After receipt of this notice the individual reclaimed will remain under arrest on board until the return of the vessel or until the meeting with another Belgian vessel, which will take him on the same conditions, without prejudice of the power inscribed in article 47 of the law of June 21, 1849.

"Mention will be made of all this on the log book on board" (ship's journal).

"The delay prescribed by section 2 of article 5 aforesaid will take date, in that case, at the moment that the foreigner shall have been imprisoned in one of the state prisons."

We promulgate the present law and order that the seal of state be affixed, and that it will be published by the Moniteur.

Given at Laeken, June 28, 1889.

LEOPOLD.

By the King:
The minister of justice,

JULES LE JEUNE.

Sealed with the seal of state.
The minister of justice,

JULES LE JEUNE.

On March 22, 1874, the minister of the United States at Brussels transmitted to the Department a report* on the law of March 15, 1874, by the Belgian commission charged with the examination of the question of extradition. This report is as follows:

EXTRADITION.

Report made on behalf of the Central Section,† by M. Wouters.

[Session of February 26, 1874.]

[Translation.]

GENTLEMEN: Legislation with regard to extradition, after having long constituted an exceptional branch, entered some years since into the domain of common law.

* Printed in Foreign Relations, 1874, pp. 56–63.

† The central section, presided over by M. Schollaert, was composed of Messrs. Santkin, Lefebvre, Van Iseghem, Pety de Thozée, Wouters, and Biebuyck.

The onward march of civilization, the wonderful inventions of modern times, and the modifications which have almost everywhere been introduced in penal procedure, are the principal causes to which this state of things is to be attributed.

As nations have extended and multiplied their relations, they have realized the necessity of mutually aiding each other in the repression of offenses against the laws of universal morality and justice.

Belgium has not remained behind in this movement.

The law of 1833 was only of a provisional character, and required numerous improvements. These were made in 1868. We will briefly state what they were:

The number of acts rendering their perpetrator liable to extradition, which were only a few offenses of exceptional gravity, has been extended to all offenses in common law which are provided for and made punishable by the penal laws of civilized nations.

To the sentence of condemnation and the order of the chamber of indictments the law of 1868 assimilated the writ of transfer from the council chamber and the instrument of criminal procedure issued by a competent judge, decreeing formally, or causing, with full authority, the transfer of the party accused to a court of repressive jurisdiction.

The above was not the only modification made in the law.

According to the law of 1833, when the transit of a criminal through Belgium was asked for by a government having an extradition treaty with our country, such passage could only be granted by an observance of all the formalities required for extradition itself. The bill passed by the chambers in 1868 required only the production of the document serving as the basis of the extradition, without requiring in anything else notice from the chamber of indictments.

A no less important provision was introduced by article 4, which, in order to secure the prompt and efficient repression of crimes and offenses, permits the provisional arrest of a foreigner, in an urgent case, on the exhibition of a warrant of arrest issued by the examining magistrate of the place of his residence, or of the place where he may be found, based upon official notice given to the Belgian authorities by the authorities of the territory in which the crime or the offense shall have been committed.

The law of 1868, moreover, rendered applicable to the offenses provided for in the first article, articles 2 and 3 of the law of December 30, 1836, concerning the repression of crimes and offenses committed by Belgians in other countries, and the law of July 7, 1865, concerning foreigners.

Finally, it provided for the publicity of hearings before the chamber of indictments, and granted to foreigners the privilege of defense by counsel.

This reform, which we have thought proper to mention here for the purpose of better fixing the sense of the new provisions, was sanctioned by the almost unanimous vote of the chamber and of the senate, and ratified by the general sentiment of the country.

Several more steps still remain to be taken in this path, and they form the object of the bill submitted to your consideration.

It is to be remarked, this bill leaves previous legislation on the same subject intact in all its essential parts. It merely introduces some improvements the propriety and utility of which have been demonstrated by experience.

EXAMINATION OF THE SECTIONS.

The 1st, 2d, 3d, 4th, and 5th sections voted for the bill unanimously; in the 6th section it was adopted, three members voting for it and two not voting.

In the third section a member asked if No. 3 of the 1st article of the bill included letters of credit and postage-stamps.

The same member requested the government to explain itself in regard to the generic term *deception*, inserted in No. 20 of article 1st.

In the 6th section, one member, referring to the 3d article of the bill, pointed out several objections to granting extradition on the production of a warrant of arrest. He thought it preferable to leave existing legislation on this point unchanged.

EXAMINATION IN THE CENTRAL SECTION.

The general discussion was opened and closed without observation.

In article first the section instructed its reporter to ask the minister of justice for the explanations desired by the third section.

A member desiring to know why No. 12 of article first is only applicable to attempts against individual liberty, committed by private persons, and should not be applied to the same acts committed by agents of the public authorities, the section decided that a question in this sense should be addressed to the government.

In transmitting to him the replies to these various questions, the minister of justice requested the reporter to remark to the central section that they do not relate to the modifications which it is designed to introduce by the bill into the present law.

The minister said that the chamber would doubtless think, as did the government, that it was important to alter the text of the existing law as little as possible, so as to avoid a troublesome perturbation in jurisprudence and in the interpretation of international conventions.

The minister added that he had, to this end, caused the changes which seemed desirable in the law passed six years previously in relation to the matter under discussion to be printed in italic letters in the bill.

The central section shared this view.

It is important to observe, while on this subject, that the list of offenses provided for in article 1 of the law of 1868 receives no additions by the bill under discussion. In including the receiving of stolen goods and assaults and wounds which have caused serious mutilation the bill only makes good an omission, the cause of which is pointed out in the statement of motives.

It seemed proper expressly to mention complicity and the attempt to commit crime, which, in the practice of courts of appeal, have always been considered as being understood, by implication, in the terms of the law of 1833 and that of 1868, and have been mentioned since the latter date in all treaties made in accordance with that law.

The new article 2, which provides that, when the crime or offense giving rise to a demand for extradition shall have been committed outside of the territory of the party making the demand, the government may deliver up, on condition of reciprocity, a foreigner who is under prosecution, or who has been sentenced, in cases in which the Belgian law authorizes pros-

ecution for the same offenses committed outside of the kingdom, was met with no objection on the part of the central section. That section thought that this provision supplied an important desideratum in the law, and that ample reasons for its existence were given in the statement of motives.

A Belgian might happen to be condemned *in contumaciam* in Belgium for a crime provided for by article 5 of the code of criminal examination, and then might cause scandal by coming to make a parade of his impunity on our frontiers, without fear of being disturbed or delivered up on account of an act committed outside of our territory.

Everybody admits that the law can not tolerate such a thing.

Nevertheless, in order to prevent certain countries from unduly extending their jurisdiction in foreign countries, and thus removing persons whose extradition is desired by them from the jurisdiction of their natural judges, the bill wisely provides that the government shall not surrender, on condition of reciprocity, a foreigner who is under prosecution or who has been sentenced, save in cases in which the Belgian law authorizes prosecution for the same offenses committed outside of the kingdom. By reason of this restriction, which is formally stated in the law, the measure introduced can present no inconvenience.

With regard to article 3, a member made the same observations that were made in the 6th section.

A warrant of arrest seemed to him to be too summary a document to authorize extradition. He feared that this mode of proceeding might bring about abuses. It was better, he thought, to continue to require a previous examination in a foreign country.

This opinion was not shared by the section.

The measure whose adoption was proposed by the bill seemed to it to be supported by the strongest grounds.

Let us observe in the first place, that it has been adopted in the treaties of all countries successively, save those which have been concluded by Belgium and the Grand Duchy of Luxemburg, and this constant and almost universal practice has given rise to no inconvenience. It is readily seen that the exceptional position in which we are placed in this respect must be damaging to our relations with foreign governments, since it does not permit us to offer a reciprocity founded upon broader bases, such as is generally admitted in the conclusion of international arrangements in relation to extradition.

Considered in itself, the proposed measure offers very great advantages, which we will succinctly examine.

Its first effect will be to exert a decisive influence upon the speediness of the proceedings.

It must be admitted that a preparatory examination in the absence of the party accused, so that he can not be confronted with his accomplices or with the witnesses, is necessarily incomplete and defective.

Moreover, in the case of an arrest in a foreign country, it being necessary that the decision for the transfer to a competent judge be produced within two months, the examining magistrate must confine himself to an investigation which is too often imperfect and inconclusive as to the facts of the case.

The case runs the risk, therefore, of being delivered over to the hazards of a hearing, without having been either matured or elucidated.

The inconvenience is especially apparent in criminal matters, in which the intervention of the council-chamber is not sufficient, and in which the court must, in its turn, pronounce sentence within the allotted time.

The interest of the accused is here identical with that of the prosecution.

Is it not evident that an examination held in his absence, when he can produce no evidence in his own behalf, must result in an order for the transfer of the accused to a competent court, and that it can have no other effect than to prolong his detention without any benefit to him?

Besides, it frequently happens that the accused asks to be delivered up to justice in his own country without delay, without waiting to go through the formalities of extradition, although he is then obliged to renounce the immunities which are secured to him by law and treaty.

Henceforth this will not be the case; he will be present himself throughout the examination, will choose a defender to aid him in refuting the charges made against him, and that without being deprived of any of the guarantees provided by article 6 of the law of December 1, 1833, which was kept in force by the law of 1868.

Let us not lose sight of the fact that our organic extradition law was enacted that we might conclude treaties with all civilized nations, and not only with countries whose forms of procedure are the same as our own.

In order to obviate the difficulties which might have arisen from the difference in the manner of organization of the repressive tribunals of foreign countries and those of Belgium, the law of 1868 assimilated to the writ of transfer from the council-chamber and to the order of the chamber of indictments the corresponding writ of a foreign criminal court.

It was evidently impossible precisely to define these documents; a rule, which permitted no deviation from it, was that they were to be the last instrument of preparatory procedure transferring the accused to the jurisdiction of his final judges.

But how is it to be determined whether the foreign document possesses this character, and whether no intermediate instrument is to come between the warrant of arrest and the appearance of the accused before the judge who is to punish or acquit him?

What shall we say especially of the English and American warrants? Can we recognize them as really possessing the character which the law requires? What shall we decide as regards the order for *Eröffnung der Untersuchung*, which is a part of the German procedure, the *auto de prision* of the Spanish laws, &c.? These documents daily give rise to difficulties to which the measure proposed by the bill would put an end, and which are now the only obstacle to the conclusion of an extradition treaty with the United States, which country has been the place of refuge for the majority of the great criminals who for some years past have escaped from justice in Belgium. The United States have inscribed in their laws the principle of the presence of the accused at every stage of his examination.

The extradition on a warrant of arrest is, moreover, readily reconcilable with the new provisions of the bill for precautionary detention, which has been viewed with such marked favor by public opinion.

It may even be said that it is the corollary and the necessary condition of the passage of this bill.

For if the legislator steps aside in this matter from the rigor of our penal procedure, if he leaves the accused party, who is presumed to be guilty, provisionally at liberty, this is done with the moral certainty that he will appear to answer the charge made against him. If he abuses the confidence of the examining magistrate by crossing the frontier, he must be restored, as speedily as possible, to his natural judges, without necessity of having recourse to all the formalities of a preparatory examination, the least inconvenience of which is that it is sometimes accompanied with delays which are incompatible with a proper administration of justice.

It is to be remarked that the new guarantees contained in the bill which was introduced on the 20th of January last are to be applicable to a Belgian surrendered by extradition for trial by the courts of his country.

Thus, immediately after his examination, he may communicate with his counsel. (Art. 3.) Thus also, within five days after the examination, the maintenance of the warrant of arrest will be made subject to confirmation by the council-chamber. (Art. 4.)

The case is the same with the guarantees provided in the following articles, the benefits of which can not be denied him.

And let it not be said that a warrant of arrest is too summary a document, and that it does not permit the chamber of indictments to base its judgment upon sufficient information. This objection would seem more valid if Belgian judges had to decide concerning the guilt of accused parties whose extradition was demanded by foreign governments. This is no part of their duty; all that they have to do is to examine whether the offense with which the accused is charged in the document produced, be it a warrant of arrest, writ of transfer, indictment, or sentence, is provided for and made punishable by our laws, and whether it is among the offenses enumerated in the extradition treaty.

A warrant of arrest not containing these indications would be irregular, and could not be accepted.

Let us observe, finally, that the introduction of this measure in nowise impairs the guarantees provided by the laws of 1833 and 1868.

Thus the warrant of arrest will first be rendered executory by the council-chamber; the session of the chamber of indictments, when the latter is called upon to give its opinion, is to be public, and a foreigner may enjoy the benefit of counsel.

All these guarantees must evidently remove all fear of an arbitrary or exaggerated enforcement of the law.

The provision of article 4 of the bill was adopted by the section without debate.

The framer of the law of 1833 thought little about the transit question, and this is not at all strange; extradition was then considered as a measure of exceptional gravity, principally confined to countries bordering upon each other. Since that time the principle has become general as the relations of nations have become extended, and the number of treaties has been greatly increased.

Of the nineteen conventions which Belgium has with other countries, only four are with countries bordering upon her; in the case of most of the others transit has become a necessity.

It was therefore a necessity that the formalities prescribed by our laws in this matter should be simplified in certain respects.

Transit can not be considered as a real extradition, nor can a foreigner who thus passes through our country by compulsion be compared to one who comes of his own accord to seek an asylum there under the ægis of its laws.

To prevent his passage through our territory would be opposing a simple measure of execution, without any benefit to the foreigner; it would cause long and costly delays, and would subject our country to inevitable reprisals.

Belgium was therefore deeply interested in the adoption of a mode of procedure which should be free from these difficulties and delays. The law of 1868 provided for such a mode in its third article, and the new bill only supplements that provision.

The proposition to increase from ten to fifteen days the duration of the provisional arrest in the case of a country bordering upon our own, and the authorization to extend this time to three months in the case of countries not in Europe, did not form a subject of discussion in the section; the reasons for this change are given in the statement of motives, and justify it in all points.

A final improvement is introduced in article 12 (new) of the bill. It authorizes compliance with letters rogatory issued by competent authorities in foreign countries, and asking either for a domiciliary visit or the seizure of the *corpus delicti* or documents which can convict the accused, in the case of one of the acts enumerated in the first article of this law.

The need of this improvement had long been felt: the legitimate complaints made in consequence of damage done to commercial and industrial interests rendered it very necessary.

Various requests from our judicial authorities, asking that domiciliary visits and seizures might be made in other countries, have necessarily remained unexecuted, on account of the inability of our Government to grant reciprocity when similar requests were addressed to it by those countries.

Our constitution declares that a man's domicil is inviolable, and permits a deviation from this principle only in the cases provided for by the law and in the form which the law establishes.

No. 4 of article 5 of the law of 1868 authorizes, it is true, the examining magistrate to proceed in accordance with the rules prescribed by articles 87 to 90 of the code of criminal examination, but this article is not applicable in the matter in question, in which it is necessary to proceed to the visit and seizure, independently of any demand for extradition.

It was therefore proper to extend the exception somewhat.

Belgium is interested therein in the same way as foreign powers, for it frequently happens that an accused person takes advantage of the time which precedes his arrest and sends his papers and correspondence across the frontier, such papers being all that can establish the evidence of his guilt and render the examination satisfactory.

In reality, the seizure of embezzled articles or of documents which can convict is, as remarked in the statement of motives, but a kind of material extradition, which is based upon the same principles as the surrender of the accused.

But, in the same manner as extradition, the execution of letters rogatory requesting domiciliary visits and seizures must be surrounded by strong guarantees, designed to protect the domiciles of Belgian citizens from indiscreet and unwarranted search.

The first of these guarantees should be to restrict the execution of letters rogatory in such matters to those cases in which the law allows extradition to be granted.

There will then be no danger of search in political matters or in matters in which the press is concerned; nor will there be any in fiscal matters and others not specially provided for.

A second guarantee inserted in the bill is the following: Letters rogatory from a foreign country must be rendered executory by the council chamber of the tribunal of first instance of the place where the search and seizure are to be made.

A doubt arose in the central section in regard to the proper interpretation of No. 5 of article 12.

The following is the reply of the minister of justice to the inquiry addressed to him on this subject:

"The provision of the concluding portion of article 12 (bill) can by no means result in investing the council chamber with the right to decide civil suits in cases in which the ownership of articles is claimed by a third party. The functions of the council chamber are in such cases purely conservative. It being its duty only to order the surrender of the articles seized to the foreign government, it has no other right except to refuse such surrender when third parties holding the articles, or others, such as unpaid hotel-keepers or tradesmen, are interested in having the seized articles prevented from crossing the frontier.

"The action of civil justice naturally remains reserved in this case, as in the one provided for in the 6th paragraph of article 5 of the law of 1868. The mention of the third parties appearing as claimants was only inserted in the bill for the purpose of formally enabling them to oppose, before the council chamber, the sending of the articles to a foreign country."

This letter having been read to the section, a member proposed to extend to the 6th paragraph of article 5 of the bill the provision of the concluding portion of the 12th article. This addition to the text of article 5, being recommended by the same considerations as those just stated, was approved.

The bill was passed by the central section, all the members present voting in its favor.

SCHOLLAERT,
Chairman.

ED. WOUTERS,
Reporter.

APPENDIX.

Questions asked by the central section.—1st. Does No. 3 of article 1 of the bill include letters of credit and postage-stamps?

Replies of the minister of justice.—"1st. Article 1, No. 3, of the bill, reproducing the text of the corresponding provision of the law of April 5, 1868, is applicable, as is that provision, to forgeries committed in *letters of credit*, which is evidently comprised in the terms of articles 196 and 197 of the penal code, which are referred to by No. 3, and which provide for the pun-

ishment of the crime of forgery and the use of forgeries which have been committed in *commercial papers or blank checks or in private letters.* (See Parliamentary documents, 1867–'68, Appendix to No. 76.)

"As to the counterfeiting of postage-stamps, it is comprised not only in No. 3 but also in No. 23 of article 1. The text thereof is identical with that of the law of April 5, 1868, which refers to articles 188 and 189 of the penal code, which provide for the punishment of the crime of counterfeiting postage-stamps and other adhesive stamps, and the use of such counterfeit stamps."

2d. Why does No. 12 of article 1 only apply to attempts against individual liberty committed by private persons, without referring to the same acts committed by the agents of public authority?

"No. 12 of article 1 confines itself in the new law, as in the law of 1865, to attempts against individual liberty committed by private persons, and provided for by articles 434–442 of the penal code, because the same acts committed by agents of the public authority are included among crimes and offenses against the rights guaranteed by the constitution (Title II, arts. 147 and 148 of the penal code), and because crimes of this kind might, under certain circumstances, be of a political character."

3d. What is the precise meaning of the word *deception* in No. 20 of the bill?

"3d. The precise meaning of the word *deception* in No. 20 of the bill is determined by the reference made by the law of 1868, same number, to articles 498–501 of the penal code. This word, therefore, includes deception practiced in regard to the identity, nature, origin, and quantity of things sold, as well as the adulteration of articles of food."

Amendment made by the central section:

Art. 5, *at the end.* "And shall decide the case arising upon the claims of third parties appearing as claimants."

BRAZIL.

On February 4, 1887, the Imperial Government addressed to the Brazilian legations and consulates a circular stating the terms on which, even without a treaty, it was willing to comply with demands for the extradition of criminals. These terms are as follows:

1. When the crimes of persons whose extradition is demanded shall have been committed in the territory of the government making the demand, and the said government offers or is willing to reciprocate.

2. When crimes by their atrocity or frequency may endanger the morality and safety of a people, such as robbery, murder, counterfeiting, forgery, and some others.

3. When the proofs are such that the laws of Brazil, if the crime were committed in its territory, would justify the arrest and trial of the criminal.

4. When extradition is demanded by the minister of the nation within whose jurisdiction the offense took place.

5. If the accused shall have committed crimes in more than one coun-

try and his extradition be demanded by more than one government, he will be delivered to that in whose territory the gravest offense was committed.

It is understood that, if the accused be a Brazilian citizen, he will not be given up, as his surrender in this case is contrary to the constitution of the Empire, and that political crimes, as may be concluded from the principles stated, will always be excepted.

It is also understood that the expenses incurred in the arrest and delivery of criminals will be paid by the government demanding their extradition.

CHINA.

February 6, 1889, Mr. Denby made the following report:

SIR: In answer to your circular of November 26, relating to extradition, my reply will be necessarily brief.

We have no extradition treaty with China. Portugal, Great Britain, and Japan have treaties more or less affecting this subject. Duplicate copies of the articles in said treaties providing for extradition are herewith enclosed.

The duty of extradition, as has often been held, does not arise from the "favored nation" clause. Under the present system of jurisprudence of China extradition proceedings in conformity with western usage are impracticable. The foreign powers generally have not judged extradition treaties to be necessary.

Under the exterritorial system a foreigner in China is subject to the laws of his country. It is generally held that an absconding criminal of any nationality can be arrested by the officials of his Government.

Such criminals could not be arrested, held, or tried by a Chinese magistrate. It has been held in this legation and by the consuls that an American who is charged with being an absconding criminal from any country with which we have extradition treaties can be arrested in China by our consuls and delivered up after the proof required by the treaties has been made. I suppose that a consul would have jurisdiction to arrest an American absconding from the United States on a charge of crime committed by him in the United States and could deliver him up under the direction of the Secretary of State.

If this view be correct, an extradition treaty as applicable to the arrest of American criminals is not needed in China. As applicable to the arrest and delivery of Chinese subjects who are charged with crime committed in the United States, the only course now available is an appeal to the comity of this Government.

I do not doubt that on proper application, made by a diplomatic officer, the surrender of a Chinese subject would be ordered by the Government.

There are no imperial decrees on this subject and no adopted forms. Under these existing conditions it becomes unnecessary to reply specifically to the interrogatories set out in the said circular.

I have, etc.,

CHARLES DENBY.

[Inclosure 1.]

Treaty of June 26, 1858, between China and Great Britain.

ARTICLE XXI.

If criminals, subjects of China, shall take refuge in Hong-Kong or on board the British ships there, they shall, upon due requisition by the Chinese authorities, be searched for, and, on proof of their guilt, be delivered up.

In like manner, if Chinese offenders take refuge in houses or on board the vessels of British subjects at the open ports, they shall not be harbored or concealed, but shall be delivered up, on due requisition by the Chinese authorities, addressed to the British consul.

[Inclosure 2.]

Treaty of September 13, 1871, between China and Japan.

ARTICLE XII.

If any subject of either power, having violated the law of his own country, secrete himself in an official building, merchant vessel, or warehouse of the other state, or escape to any place in the territory of the other, on official application being made by the authority of the state of which such offender is a subject to the authority of the other, the latter shall immediately take steps for the arrest of the offender, without show of favor. Whilst in custody he shall be provided with food and clothing, and he shall not be subjected to ill usage.

[Inclosure 3.]

Treaty of December 1, 1887, between China and Portugal.

ARTICLE XLV.

As regards the delivery of Portuguese and Chinese criminals, with the exception of the Chinese criminals who take refuge in Macao, and for whose extradition the governor of Macao will continue to follow the existing practice, after the receipt of a due requisition from the viceroy of the two Kwangs, it is agreed that in the Chinese ports open to foreign trade the Chinese criminals who take refuge at the houses or on board the ships of Portuguese subjects shall be arrested and delivered to the Chinese authorities on their applying to the Portuguese consul; and likewise the Portuguese criminals who take refuge in China shall be arrested and delivered to the Portuguese authorities on their applying to the Chinese authorities, and by neither of the parties shall the criminals be harbored, nor shall there be delay in delivering them.

COLOMBIA.

The following is taken from the work of Mr. Seijas, El Derecho Internacional Hispano-Americano:

It is necessary to call attention to the fact that none of the existing conventions concerning the extradition of criminals that were concluded by the Republic previously to the adoption of the constitution of 1863, nor that of May 30th, 1868, concluded with the Republic of Venezuela, which the Colombian Congress approved in 1869, which did not take effect, because its ratifications were not exchanged—none of those conventions contain the limitation introduced by the Congress of 1881 in the one aforesaid, which was concluded with the United States Government. The broad interpretation given to that provision of article 15 of the constitution which guarantees the lives of persons traveling or sojourning in Colombia, on which this modification is based, appears to have been made for the first time in 1871, by Mr. Zapata, at that time secretary of the interior and of foreign relations, in connection with the negotiation that had been entered into with Her Britannic Majesty's minister for the conclusion of a treaty for the mutual extradition of fugitive criminals.

"As your excellency is aware," said Mr. Zapata in his note of November 24th, 1871, to Mr. Bunch, "the national constitution has guaranteed to all inhabitants and sojourners in the United States of Colombia the inviolability of their lives in so absolute a manner that not only is it the duty of private individuals to respect the lives of others, but not even the governments, federal or state, can decree the death penalty in their laws. When a foreigner is within the national domain, whatever may be his personal conditions and the criminal acts that he has committed in another country, that very instant he enters upon the enjoyment of the aforesaid guarantee, and the Government, which is a mere mandatary of the community, and is obliged to act wholly within the limits and in accordance with the provisions of the laws established by it for its own regimen, can not, either directly or by means of conventions or pacts of any kind, make it nugatory or co-operate in making it so. The constitution has made no restriction or distinction whatever with a view to excluding certain persons from the benefits of the aforesaid guarantee. Any inhabitant, native or domiciled, as well as any transient person, has an equal right to the protection of his individual existence, as provided by the fundamental law of the Republic; in order to afford such protection, the Government, whenever this is possible, must prevent private attempts upon life; it must bring to trial and punishment those persons who seek to impair the inviolability of life, and must itself abstain from violating it or co-operating in its destruction even by way of punishment." (Seijas, El Derecho Internacional Hispano-Americano, 188; extract reprinted from Foreign Relations of Colombia, 1884.)

FRANCE.

January 14, 1889, Mr. McLane made the following report:

SIR: In reply to your circular of November 26th, 1888, instructing me to make a report on the subject of extradition, as practiced by the Government to which I am accredited, and suggesting certain inquiries for my guidance, I have the honor to send herewith:

1st. A report showing the different stages through which a requisition for the surrender of a fugitive criminal passes in France. This report was prepared by Mr. Vignaud, but I have revised it with him and adopted it as my own.

2nd. A letter from Mr. Edmond Kelly, a competent American lawyer, who acts occasionally as counsel of this legation, with reference to the defects existing in our extradition treaty with France. This letter was written some time ago, when the subject of extradition was being discussed in this legation in connection with the case of Edmund Yard, with which the Department is familiar, and in which Mr. Kelly was employed for the prosecution.

I have, etc.,

ROBERT M. MCLANE.

[Inclosure 1]

Extradition as practiced in France.

As now understood and practiced in France, international extradition is not difficult. The following sketch will show the different stages through which an extradition proceeding passes:

General conditions.—The French Government extradites and applies for extradition in the absence of any treaty. When there is no treaty it asks for reciprocity and expects it, but the matter is entirely within its discretion. When there is a treaty it does not consider itself as obliged to refuse extradition for offences not mentioned in that treaty.

Who may be surrendered.—It surrenders foreigners only. When the fugitive belongs to a country which is not the one applying for the extradition the diplomatic representative of that country is informed of the application, and asked if he has any objections to the extradition. This is a matter of comity; the French Government is not bound to refuse the extradition if it is objected to, its object being simply to enable the representative of a foreign power to extend protection to his countrymen. To communications of this kind this legation usually replies that it has received no instruction to oppose the extradition. When the fugitive applies himself to the legation one of the gentlemen acting as our counsel is requested to examine the case, and if it is found that there is occasion for interfering we intervene. I have done so, however, only once.

The French Government does not surrender its citizens; its reasons are that the French tribunals are the natural judges of a Frenchman, and that all Frenchmen can be prosecuted and tried in France for offences committed abroad.

Application for the extradition of a fugitive.—Application for the extradition of a fugitive from justice who has taken refuge in France must be made in all cases through the diplomatic channel. It would not be received from a consular agent. The basis of any application of this kind is the statement that a warrant of arrest has been issued by the lawful authorities of the demanding Government, and that the offence charged is one coming under the treaty. The demanding Government is also expected to furnish means of establishing the identity of the fugitive. The fact that the requisition is made through the diplomatic channel is considered to be sufficient authentication.

Provisional arrest and detention.—Previous to a formal requisition for the extradition of a fugitive his provisional arrest and detention can be obtained upon diplomatic application, by stating that the request is made by authority and that the formal requisition is on its way or is being prepared. Action of this kind can be taken simply upon a telegram. Diplomatic intervention is not, however, always necessary. In cases of emergency an unofficial request from the representative of a country with which France has a treaty of extradition, or even from the police of that country to the French police, reaches the same end. The detention of a fugitive thus arrested is not maintained ordinarily more than from fifteen days to three weeks. If the formal requisition arrives after the fugitive is released he can be arrested again.

The requisition at the foreign office.—A formal requisition for the extradition of a fugitive is always addressed to the minister of foreign affairs and is examined by him first. If found irregular, or not in conformity with the treaty or with existing laws, it is returned to the diplomatic agent through which it was was received, with the reasons for so doing. If on its face it seems to be regular it is at once transmitted to the department of justice. It never goes to the courts, which have nothing to do with the matter.

Before the department of justice.—The minister of justice examines in his turn the requisition. If he finds it defective he returns it to the foreign office with his objections. If he has no objection to oppose he sends it to the minister of interior, under whose direction the police department is, with a request to have the fugitive arrested. When the proceedings reach this stage, the minister of interior has no discretion in the matter. He can abstain from arresting a fugitive when he is asked to do so by a foreign minister or the police of another country; he can not when he receives the requisition through the department of justice. The fugitive is arrested and brought at once before the "procureur" of the Republic in the district where the arrest took place.

Before the "procureur."—The procureur, who receives at the same time communication of all the papers concerning the case, proceeds without delay to the interrogation of the fugitive. He is not allowed to enter into the question of the validity of the requisition, his interrogatories having mainly for object to establish the nationality and identity of the accused, to record his protest, if he does protest, and finally to ascertain whether he consents to be surrendered or not. The prisoner is warned that if, by waiving the legal formalities and proceedings of his extradition, he avoids a few weeks of preventive detention, on the other hand he is no longer protected by the treaty under which his extradition is asked, and conse-

quently he can be tried for any offence with which he may be charged. If he refuses to be voluntarily surrendered the proceedings follow their course. If he consents he signs a paper to that effect. It should be noted that this interrogation takes place immediately after the arrest of the fugitive, and that it is only when arrested, by exception, before the formal requisition reaches the authorities of the country of refuge, that he may find an advantage in consenting to be surrendered at once.

Before the attorney-general.—In both cases the procureur reports to the attorney-general, who reports to the minister of justice.

Again before the minister of justice.—If the fugitive has consented to be surrendered, the minister of justice requests the minister of interior to remand him to the frontier, where he is formally delivered to the agent of the demanding country.

Before the Executive.—If the fugitive refuses to be surrendered—the requisition having been found to be correct—a decree issued by the President orders the extradition. This decree mentions the offence or offences for which the fugitive is extradited, and states that the extradition is granted in compliance with such and such treaty or in return for a promise of reciprocity, as the case may be.

Before the minister of interior again.—This decree, with all the papers concerning the case, is placed in the hands of the minister of interior, who sends the prisoner, under proper escort, to the frontier, where he is delivered. A copy of the same papers are furnished to the minister for foreign affairs, who notifies the demanding Government.

Transit.—The French Government grants the right of transit across its territory of criminals surrendered by another Government. Usually this favor is obtained through the diplomatic representative of the demanding Government, who is expected to state that the criminal extradited is not a Frenchman, and that his crime is not political, but one at common law. The transit is made in the custody of French agents.

Payment of expenses.—The rule adopted between France and nearly all other countries—except the United States—is not to charge any expense to the demanding Government, the country of refuge assuming them all.

The French authorities have complained that the expenses of extradition proceedings in the United States are so heavy that it is only in exceptional cases that they will venture to make a requisition for the surrender of a fugitive.

Property of a fugitive surrendered.—The property or effects of a fugitive whose extradition is applied for are invariably seized upon his arrest, whether the arrest is provisional or not. If, for some cause or other the extradition is not granted, the property is returned to the owner; if the extradition takes place, it is turned over either to the agent in charge of the fugitive or to the diplomatic representative of the demanding Government.

The foregoing sketch shows that if the minister of justice has much to do with all extraditions in France, the courts of justice have not. A fugitive whose extradition is applied for can have a counsel, but he derives from him very little assistance. The French Government being authorized by law to expel any foreigner without giving any reason for its action, no foreigner can appeal to the courts for protection in such cases. In extradition matters the foreign Government with which France has a treaty

can complain of the manner in which it is applied; the fugitive can not. He is entirely in the hands of the Government that may grant his extradition even if not obliged to do so by the treaty.

[Inclosure 2.]

Mr. Kelly to Mr. McLane.

PARIS, *December 9th*, 1887.

DEAR SIR: Confirming my conversation with you of last week, I beg now to submit to you the following observations as to the defects that are to be found in the existing extradition treaties of the United States with France, the urgent need for having these defects remedied, the principal points which a new treaty with France ought to cover, and such recent treaties as may serve as models for the same.

The fundamental treaty between France and the United States is of 1843. Two articles were added thereto, one in 1845 and the other in 1858. Since 1858 no extradition treaty or convention of any kind has been made between the two countries.

The great progress that has taken place within the last ten years in matters of extradition is sufficient argument in itself for a new treaty. Not only have recent extradition treaties differed as to the character of offences for which extradition should be granted, but they have also differed as to the manner in which these offences are defined. As it is not desirable at this moment to enter more into details than is absolutely necessary in order to show the urgent need for a new treaty, I shall confine myself to pointing out the defects which appear most loudly to demand attention. They may be briefly summarized as follows:

First. The list of extraditable offenses should be enlarged.

Second. Extraditable offenses should be properly defined.

Third. The character of the evidence necessary to secure extradition should be specified.

Fourth. An agreement for provisional arrest should be inserted.

Fifth. The existing arrangement as to expenses should be modified.

Sixth. Provision should be made for the seizure of property involved in extradition proceedings.

Before examining these in detail it may be well to state at once that the treaty made in 1876 between France and England is the one which would most naturally serves us as a model. In the first place, it was drawn up after a careful examination of both legislations by a parliamentary committee and with careful reference to the difference between the two. In the second place, it embodied the result of experience during the twenty years that preceded it. In the third place, it has given satisfaction to both parties.

With this model before us I beg to make with regard to the various points before enumerated the following suggestions:

First. The list of extraditable offenses should be enlarged.

A comparison of the treaty between the United States and France above mentioned with that of 1876 between Great Britain and France is the best commentary under this head.

Second. Extraditable offenses should be properly defined.

Under the system adopted in the treaty of 1843 reference is made almost exclusively to the French law for definition of extraditable offenses. Under the additional article of 1845 by the use of English words reference is inferentially made to American law for this purpose, and under the additional article of 1858 neither law is either directly or indirectly referred to, but the definition of the offenses added bears upon its face an attempt to compromise between the two, which is not a success in itself and can not but give rise to difficulty in practice. Indeed, it may be parenthetically stated that this article as published in the "Bulletin Officiel" is absolutely different from that published in our own official publications.

The effect of referring to either one of the two legislations involved for an extraditable offense occasions a perpetual conflict of law, which it is of the greatest importance to eliminate. An interesting instance of this conflict arose in the case of Edmund Yard. The question in that case was whether an executor under American law could be assimilated to an officier ministeriel under the law of France.

The possibility of conflict upon this subject is greatly diminished, if not absolutely disposed of, by definition of extraditable offenses in such terms as to exclude reference to either legislation. This system has been adopted in the treaty with England of 1876.

Third. The character of the evidence necessary to secure extradition should be specified.

Our present treaty has taken no account of the totally different system which prevails in the United States and France in reference to extradition proceedings.

In our country a demand for extradition gives rise to a judicial proceeding under which the courts are called upon to decide whether the papers produced by the Government demanding extradition are sufficient to make a prima facie case.

This involves an examination into the evidence upon which the original warrant of arrest was granted.

Under the French system a demand for extradition gives rise to no judicial proceedings whatever. The papers produced by the Government demanding the extradition are examined as to their form only, and if there is no reason to doubt the identity of the person involved, the Government by purely administrative decree grants the extradition without judicial proceedings of any kind.

The French system is an arbitrary one which could not be adopted in England and America where the personal liberty of the individual is surrounded by safeguards. The existence of the habeas corpus act in Anglo-Saxon countries makes it necessary for them to adopt a system which can in no way be assimilated to that prevailing in France. The existing treaties with the United States are absolutely silent on this subject, whereas the English treaty goes into this matter with care and precision.

Fourth. An agreement for provisional arrest should be inserted.

The provision in the new treaty of France with Belgium of the 29th of April, 1869, has in this respect given satisfaction to both parties, and might conveniently serve as a model to us. The need of such a provision is all the greater in our case inasmuch as the distance between the two countries

is considerable; arrest upon a telegraphic despatch engages the responsibility of the Government so arresting to such an extent that it is often difficult in the absence of express treaty stipulations to obtain it. Moreover, an extradition treaty should provide for so vital a contingency as this so as to make it a matter not of favor but of right.

Fifth. The existing arrangement as to expenses should be modified.

The difference in the systems of extradition adopted in the two countries already referred to gives rise to much greater expense in the United States than in France. If our legislation is of a character to throw around the liberty of the individual safeguards unknown to the French law, and we choose to provide an expensive system for maintaining these safeguards, it is hardly fair to make another country pay for them. England has seen the strength of this argument, and has modified the old system under which the demanding Government paid all the expenses and adopted the better rule that each Government should pay the expenses of its own proceedings.

This point has an important practical bearing. For every disposition in a treaty which works injustice on one of the parties is sure to react upon the other. In the present instance the disposition of the French Government to grant extradition to our own is much affected by the fact that it can not obtain extradition from us except at an immense expense. The result is that the French Government hardly ever applies to us for extradition, and when we apply to the French Government for it we are met with an objection arising from this question of expense, which it takes all the cordiality that exists between the two countries on other subjects to overcome.

Sixth. Provision should be made for the seizure of property involved in the extradition proceedings.

The importance of providing for the seizure of property whether for the purpose of evidence or for the purpose of restoring to its rightful owner is too obvious to require comment.

I have only referred to the above points in a cursory manner to-day, but hold myself at your disposal for more ample information whenever you may desire it. In closing, I may state that I have frequently received intimations from persons attached to the department of the Government before which matters of extradition are brought, to the effect that the French Government would be glad to make a new treaty with the United States. I trust, therefore, that the favorable disposition of the French Government will contribute to facilitate the repairing of the defects of the existing convention.

Your obedient servant,

EDMOND KELLY.

GERMANY.

July 3, 1889, Mr. Coleman made the following report:

SIR: Referring to the separate instruction of November 26 last of the Department of State directing me to make a report on the subject of international extradition as practiced by the German Government, I have the honor to inform you that, deeming the imperial foreign office the best

source and the only authoritative one from which much of the important information sought could be obtained, I, upon the receipt of the instruction referred to, addressed a note to the secretary of state for foreign affairs asking that I might kindly be furnished with the information called for in the ten groups of questions contained in the same.

In response to my application I received on the 1st instant a note from the foreign office, accompanied by a voluminous "memorial" containing very full and interesting data respecting the subject of my inquiries, for which I have since thanked Count Berchem, at present in charge of that office, expressing at the same time the conviction that my Government would not fail to appreciate the value of the information thus kindly furnished.

You will perceive from the "memorial" and the accompanying note, which are herewith inclosed, with translations which I have prepared for the purpose, that imperial and Prussian legislation, other than that contained in the treaties of the empire with foreign powers, contain no provisions whatever regulating or limiting extradition, other than the one to be found in the imperial penal code, which declares that a German shall not be delivered over to a foreign government for prosecution or punishment. The legation is informed, however, in the "memorial" that extradition is freely granted in the absence of conventional obligation, stress being laid, however, on the observance in such cases of reciprocity by the demanding state.

The records of this legation, notably in the case of the requisition for the surrender of Plath, Peters, and Treiber, treated of in dispatch No. 456, of June 20, 1887, and in earlier dispatches from this legation, attest great readiness on the part of the authorities of this country to facilitate extradition upon our requisitions, and great fertility in the adoption and diligence in the employment of means in the search for fugitive criminals from the United States.

The imperial treaties relating to extradition referred to in the "memorial" are transmitted herewith in duplicate, under separate cover. The treaties on this subject concluded by the individual states constituting this empire with foreign nations will be found reproduced in "Marten's Nouveau Recueil de Traités," in the library of the Department. There appears to be no other printed compilation of those treaties, and separate copies of many of them can not now be obtained.

I have, etc.,

CHAPMAN COLEMAN.

[Inclosure 1.—Translation.]

Count Holstein to Mr. Coleman.

FOREIGN OFFICE, *Berlin, June 27*, 1889.

The undersigned has the honor, referring to the note of the 11th December last, to inform the chargé d'affaires of the United States of America, Mr. Chapman Coleman, that the practice in matters relating to extradition, in so far as existing extradition treaties do not contain provisions having application to the same, is not uniformly regulated for the empire, and

that, as regards Prussia in particular, the procedure depends less on general rules than on the principles adhered to in practice. In order to answer fully the questions presented in the note referred to, it became necessary to make a close examination—the results of which will be found embodied in the accompanying memorial—of the subject with respect to the attitude of the empire and of Prussia with regard to the same. The questions referred to, in so far as they could not be uniformly answered for all the confederated German states, have been answered in that document as relating to the case of applications for extradition addressed to the empire or Prussia. In so far, however, as it may be desired to be also furnished with more exact information concerning the practice prevailing in the other states of the union, the undersigned will gladly use his mediation for the purpose of procuring the same.

The undersigned at the same time avails, etc.,

HOLSTEIN.

[Inclosure 2.—Translation.]

Memorial concerning the procedure on international extradition employed by the German Empire and Prussia.

In accordance with German views of justice the principle obtains that a subject of the empire who is in Germany may not be withdrawn from the jurisdiction of his German judge, and that when he has committed a crime or trespass in a foreign country he shall not, on that account, be delivered over to such country, but, the case being an appropriate one for such action, be prosecuted before the courts of his own country. This view of justice finds expression in the German penal code now in force, which provides in paragraph 4, No. 3, that a German may be prosecuted in Germany on account of every act which, under German law, is to be regarded as a crime or trespass committed abroad, punishable by the laws of the place where it was committed, and further directs, in paragraph 9, that a German shall not be delivered over to a foreign government for prosecution or punishment.

Apart from this provision of the penal code, which excludes the extradition of Germans, and from the provisions contained in extradition treaties which make extradition dependent on certain conditions, there exist for the German Empire, and in particular for Prussia, no rules which limit extradition to a foreign country.

As regards the empire, no legal provisions whatever, other than the provision contained in paragraph 9 of the penal code, have been decreed. The treaties respecting the extradition of criminals concluded by His Majesty the Emperor and assented to by the legislative factors, the Bundesrath and the Reichstag, have, however, the force of laws.

These are the extradition treaties of the empire with the following countries:

Italy, of October 31, 1871 (Imperial Law Gazette, 1871, p. 446).
England, of May 14, 1872 (I. L. G., 1872, p. 229).
Switzerland, of January 24, 1874 (I. L. G., 1874, p. 113).
Belgium, of December 24, 1874 (I: L. G., 1875, p. 73).

Luxemburg, of March 9, 1876 (I. L. G., 1876, p. 223).
Brazil, of September 17, 1877 (I. L. G., 1878, p. 293).
Sweden and Norway, of January 19, 1878 (I. L. G., 1878, p. 110).
Spain, of May 2, 1878 (I. L. G., 1878, p. 213).
Uruguay, of February 12, 1880 (I. L. G., 1883, p. 287).

As also the articles having reference to extradition in the consular treaty with Servia, of January 6, 1883 (Art. XXV, I. L. G., 1883, p. 70), and in the amity and commercial treaty with the South African Republic, of January 22, 1885 (Art. 31, I. L. G., 1886, p. 228).

In so far as by laws and treaties of the empire relating to the extradition of criminals, provisions which bind all the states of the union have not been made, those states are not hindered from independently regulating extradition by agreements with foreign states, or by laws enacted for their own territory.

Of conventions, some of an earlier, some of a later period, for the extradition of criminals, entered into by individual states of the union with various foreign states, there exist a number, and in particular such with France, the Netherlands, Austria-Hungary, and Russia. With the United States of America, also, extradition is regulated by various treaties, as, besides the treaty of June 16, 1852, which applies to all of the states of the former North German Union, and also to Hesse, south of the Main, and to Würtemberg, there exist separate treaties with Bavaria and Baden, of September 12, 1853, and January 30, 1857, respectively.

In detail the questions numbered 1 to 10, propounded in the communication of December 14th last, of the legation of the United States of America, are answered as follows:

1. Extradition is also accorded in Prussia and Alsace-Lorraine, as well as in the other states of the union, when no treaty requiring the same exists. This course is adopted from the point of view that it would not be in accordance either with the country's own interests or with the consideration due to friendly nations to permit persons who are prosecuted in foreign countries on account of vile penal acts to evade punishment by the appropriate foreign courts by obtaining shelter in this country. In accordance with this view, therefore, such persons are also without treaty obligation, or in extension of such, upon the request of the foreign government regularly extradited, in so far as particular objections to such course are not found to exist in individual cases. In connection with such procedure it is customary to require that by the submission of a warrant of arrest issued by the appropriate foreign court, or in some other suitable manner, it be shown on account of what acts the person in question is prosecuted, and that reciprocity on the part of the foreign state appears to be assured. What shall be deemed requisite in such cases as regards the matter itself depends upon the free determination of the Government. The requirement of reciprocity could, however, not be dispensed with, since, with every disposition on the part of Germany to extend to foreign governments official cooperation in order to bring fugitive criminals to deserved punishment, it can, nevertheless, not be regarded as proper to accord to a foreign country an assistance in furthering the ends of justice which would not be extended in return by the latter under similar circumstances.

2. Pending the reception of a formal requisition for surrender, and of the

documents to be submitted with the same, the provisional arrest and detention of a fugitive criminal can be granted. In so far as individual extradition treaties do not contain contrary provisions, the foreign government seeking extradition must, in order to secure provisional arrest and detention, make requisition therefor. For such proceedings the diplomatic channel, if no other means are provided, would constitute the rule. The requisition must regularly show on account of what punishable act the person in question is judicially prosecuted, and that in the country making the requisition a warrant of arrest has been issued against him.

To the extent in which greater requirements may in such cases be made by the particular foreign state, the same requirements would eventually be made of such state on the German side. Individual extradition treaties designate how long the fugitive may be provisionally held, and after what period he must be released in case the requisition accompanied by the documents necessary to support the same has not been made within such period.

This period is fixed by the treaties with Belgium and Luxemburg for the adjoining Kingdom of Prussia, and as regards Luxemburg, also for the adjoining imperial territory of Alsace-Lorraine, at fifteen days, and for the remainder of the union at three weeks; pursuant to the treaties with Italy and Switzerland at twenty days; with Sweden and Norway at six weeks; with Spain at two months, and, as regards the foreign possessions of Spain at three months; with Brazil and Uruguay at ninety days.

In so far as such treaty provisions do not exist, the period is determined by the Government in a particular case in accordance with the circumstances, and with consideration of the period accorded by the other state in such cases.

Provisional arrest and detention can be obtained on telegraphic information.

3. In the imperial extradition treaty with Belgium it is provided, in view of a legal requirement existing in that country, that provisional arrest shall take place upon a warrant issued by the examining judge (Untersuchungs-Richter) of the place of sojourn of the fugitive upon the basis of an official communication from the appropriate authority of the state making the requisition. A like provision is embodied in the extradition treaty with Luxemburg. Provisional arrest in Prussia takes place solely by direction of the administrative (police) authority—in the final resort, the minister of the interior. After the receipt of the formal requisition there is, as a rule, no necessity of a renewed warrant in support of a provisional arrest already decreed. A new one would, however, be necessary if the further detention devolved upon another authority than the one upon whom the provisional arrest devolved. In Prussia the arrest of a criminal whose extradition has been formally requested, as well as the provisional arrest, devolves in general upon the administrative (police) authority. A departure from this rule takes place only in so far as individual extradition treaties contain provisions not in accord therewith—as, for instance, the treaty with England. While, pursuant to that treaty, the person whose extradition is requested is to be primarily arrested by the appropriate authorities—therefore in Prussia by the police authorities—such person is thereupon to be conducted before the *judge* who is to examine the prisoner

and provisionally investigate the penal case in the same manner as if the arrest had been made on account of a punishable act committed in the home country (of the judge), so that the further detention depends upon the determination of the *judge*.

The case is similar with respect to the treaty of June 16, 1852, with the United States of America. These provisions have been adopted solely for the purpose of establishing a procedure having a reciprocal character with the state of law existing in England and the United States of America.

A complaint before the German court to obtain provisional arrest and detention, or arrest after demand of surrender, is not required in Germany, the principle being acted upon on the German side that extradition is conducted from government to government, and that therefore, after the requisition for surrender has been made by the government desiring extradition upon the government from whom it is desired, it rests with the latter to adopt in accordance with its laws and institutions further necessary measures. Therefore when a requisition for extradition or for provisional arrest has been made by a foreign government, instruction is given to the appropriate German authority to officially take or cause to be taken the measures appropriate to the purpose. In accordance therewith, in particular, the judicial measures requisite for arrest or detention are taken ex-officio, or the state attorney is directed to take them, without it being left to the foreign government and its official representatives to apply themselves like a private party to the German authorities or courts, and thus prosecute their claim to extradition, which rests on an international basis, like a private claim by means of a complaint before the authorities of the country. Only in the treaty with the United States of America is a "statement supported by oath" ("complaint made under oath") provided for, and in view of the procedure observed there, Germany must also meet requisitions of the United States with a similar requirement.

4. The requisition for extradition is regularly communicated to the ministers of the interior and of justice, and in connection with those authorities subjected to a provisional examination. If objections to according surrender are not found at this stage of the procedure, the matter is customarily turned over to the provincial authorities for closer investigation, and in such manner that the administrative authority (the governmental president) and the state attorney having jurisdiction at the place where the arrest of the fugitive takes place are entrusted therewith. Upon the administrative authority devolves in this connection in particular the investigation of the relations which concern the person and nationality of the fugitive, while the question whether the punishable acts with which the fugitive is charged afford in their legal nature sufficient grounds for extradition is especially one for the the examination of the state attorney. The courts participate in Prussia in this investigation only in so far as expressly provided for in the extradition treaties with foreign states, as in particular with England and the United States. This provision, however, as already indicated, has only been embodied in those treaties in consideration of the circumstances that in the foreign states in question a judicial procedure takes place in which evidence of the guilt of the fugitive must be submitted, which appears to render it proper that a like requirement should be made on the German side in case of requisitions by those states, and that

the evidence submitted by them should be subjected to examination here also. In these cases it devolves upon the German courts to pass upon the sufficiency of the evidence submitted, in order that—in accordance with the laws of the state upon which the requisition is made—it may be shown either that the commitment of the fugitive for trial, in case the punishable act had been done in that state, would be justifiable, or that the fugitive is identical with the person condemned by the courts of the state making the requisition.

The judicial decision on these points, when reached, is communicated by the state attorney to the minister of justice, and is regarded by the executive as the utterance of the official authority upon which the decision of such questions devolves. The papers to be submitted to the court must be conveyed to the Government through diplomatic mediation. Apart from the participation of the courts, which occurs only in connection with requisitions for extradition by England and the United States of America, these courts do not in Prussia occupy themselves with an examination of requisitions for extradition, for the reason that in examinations of requisitions made by other states than England and the United States of America, it is not a question of the consideration of the evidence of the guilt of the fugitive. The question of guilt is, according to the view which obtains here, solely for the consideration of the foreign courts upon whom it devolves to adjudge the fugitive, while for this Government it is only a question of determining whether the state attorney here should surrender the fugitive criminal to the appropriate foreign authorities, that is to say, whether in the foreign country a *penal* prosecution is pending for which such assistance in furthering the ends of justice should be accorded. The examination of this question, which relates to the prosecution rather than to the trial (Aburtheilung), would seem to devolve with peculiar propriety upon the state attorney, he being the official upon whom the prosecution in all internal penal cases devolves.

5. The documents to be submitted as a basis for requisitions for extradition, pursuant to most of the Imperial extradition treaties (such in particular as those with Belgium, Luxemburg, Sweden and Norway, Spain, and Uruguay), must be submitted in the original or in authenticated copies, and in such form as the laws of the state desiring the extradition prescribe.

With respect to individual states, such, for instance, as Austria-Hungary, Switzerland, and Luxemburg, partly on the basis of an agreement, partly on that of existing practice on both sides, a further authentication is not required when the documents submitted are made out with signature and official seal by the appropriate authorities of the state making the requisition, while in general it is required that the documents in question shall at the end be authenticated by the representative here of such state, in order that the authentication of the foreign office may be added before the documents are transmitted to other German authorities. The treaty with England requires authentication by a sworn witness, or by an impression of the seal of the minister of justice or other minister of state making the requisition. Since for the documents to be submitted to the United States of America as a basis for requisitions for extradition a particular certificate of authentication is prescribed there in which it is especially expressed that the documents in question are sufficient as evidence

in Germany, it will be necessary to add to the documents submitted with an American requisition for extradition a similar certificate of authentication in which it is certified in particular that such documents have been made out by the appropriate authorities of the United States, and that they are entitled to full credence there.

6. After the provincial authorities, or, as the case may be, the courts, have concluded the examination confided to them under Nos. 3 and 4, and have reported on the subject, the decision upon the requisition for extradition ensues at the central resort—in Prussia upon an understanding arrived at among the ministers for foreign affairs, of the interior, and of justice—and according to the circumstances of the particular case, after consideration of the matter by the Royal Prussian Government, or such other government of a state of the union as may be concerned, or the imperial stadtholder of Alsace-Lorraine, with the chancellor of the Empire (or the foreign office). The decision reached is officially communicated by the foreign office to the representative, from whom the request has been received, of the state making the requisition.

7. All the articles found in possession of the person to be extradited at the time of his arrest are, as a rule, officially seized, and in case the appropriate authority of the state applied to for extradition has directed their delivery, are surrendered together with the prisoner. This procedure is employed, however, only in so far as reciprocity is assured.

Pursuant to the German extradition treaties this course has been regularly pursued with respect to the particular states, but not with respect to the United States of America. As the seizure and delivery of articles in the United States does not take place ex officio, it being left to the persons sustaining damage to effect the surrender of the same by bringing action therefor before the American courts, it could not be reckoned on that on the German side, in case of an American requisition for seizure and surrender of the articles found, such requisition would be ex officio complied with; the persons sustaining damage would, however, be at liberty to prosecute their claims by action before the German courts.

8. The fugitive whose extradition has been granted is delivered to the authorities of the state making the requisition at the frontier, and not at the place where he is detained. If the conveyance home of the criminal takes place by sea on a vessel [not] carrying the German flag, and a person has been sent by the state making the requisition to Germany to receive him, he is delivered to that person at the port of embarkation on board the vessel (not a German one) in question. If the voyage is to take place on a German vessel, the fugitive, for the reason that authority over a prisoner can not be accorded to a foreign official on board a German vessel, in German waters or on the high sea, is not delivered over to such official until the territorial waters of the state making the requisition are reached.

As soon as extradition is granted the measures necessary to effect it are immediately taken. A particular period within which the fugitive must be taken in charge or removed from the country is not fixed either by law or by treaty.

9. The transit of a criminal surrendered by a third state is granted by the Government of His Majesty the Emperor or by that of another state of the union under the same conditions as extradition. What the German

attitude with respect to England and the United States of America would be in such cases, and whether in particular proofs of the guilt of the fugitive would be necessary, has not yet been considered. Germany would, it is to be presumed, upon an assurance from England or America that, a case occurring, transit would not be made dependent upon the submission of such proofs, have no objection to permit the transit of a criminal to England or the United States in the same manner, without submission of proofs of guilt, upon the production only of a warrant of arrest issued by the English or American judge.

Transit through German territory takes place regularly with the accompaniment of a German police official.

10. As regards costs it is the rule for the empire, and all the states of the union, that a reimbursement of the costs arising from the arrest, the maintenance and the transportation of the fugitive up to the time the frontier is reached, is not to be demanded of the state making the requisition, but that these costs are to be borne rather by the state upon which the requisition is made. This principle has been embodied in all extradition treaties as yet concluded by the empire, and is also regularly applied in extraditions which take place on the basis of reciprocity without treaty obligations. Apart from an older agreement with Austria-Hungary made in the period of the confederated relation, only the treaties existing between Germany and the United States of America contain a provision pursuant to which the costs of the arrest and extradition are to be repaid by the government making the requisition. This provision, in connection with the large amount of the costs which arise in America, has resulted in compelling the German authorities in many cases to abstain from making requisition for the extradition of criminals who have found an asylum in the United States of America.

GREAT BRITAIN.

I.—BRITISH LEGISLATION.

EXTRADITION ACT (1870).

[33 and 34 Vict., c. 52.]

AN ACT for amending the law relating to the extradition of criminals.

[9th AUGUST, 1870.]

Whereas it is expedient to amend the law relating to the surrender to foreign states of persons accused or convicted of the commission of certain crimes within the jurisdiction of such states, and to the trial of criminals surrendered by foreign states to this country:

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PRELIMINARY.

Short title.

1. This act may be cited as "The extradition act, 1870."

Where arrangement for surrender of criminals made, order in council to apply act.

2. Where an arrangement has been made with any foreign state with respect to the surrender to such state of any fugitive criminals, Her Majesty may, by order in council, direct that this act shall apply in the case of such foreign state.

Her Majesty may, by the same or any subsequent order, limit the operation of the order, and restrict the same to fugitive criminals who are in or suspected of being in the part of Her Majesty's dominions specified in the order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient.

Every such order shall recite or embody the terms of the arrangement, and shall not remain in force for any longer period than the arrangement.

Every such order shall be laid before both houses of Parliament within six weeks after it is made, or, if Parliament be not then sitting, within six weeks after the then next meeting of Parliament, and shall also be published in the "London Gazette."

Restrictions on surrender of criminals.

3. The following restrictions shall be observed with respect to the surrender of fugitive criminals:

(1) A fugitive criminal shall not be surrendered if the offense in respect of which his surrender is demanded is one of a political character, or if he prove to the satisfaction of the police magistrate or the court before whom he is brought on habeas corpus, or to the secretary of state, that the requisition for his surrender has in fact been made with a view to try or punish him for an offense of a political character:

(2) A fugitive criminal shall not be surrendered to a foreign state unless provision is made by the law of that state, or by arrangement, that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to Her Majesty's dominions, be detained or tried in that foreign state for any offense committed prior to his surrender, other than the extradition crime proved by the facts on which the surrender is grounded:

(3) A fugitive criminal who has been accused of some offense within English jurisdiction not being the offense for which his surrender is asked, or is undergoing sentence under any conviction in the United Kingdom, shall not be surrendered until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise:

(4) A fugitive criminal shall not be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender.

Provisions of arrangement for surrender.

4. An order in council for applying this act in the case of any foreign state shall not be made unless the arrangement—

(1) Provides for the determination of it by either party to it after the expiration of a notice not exceeding one year; and,

(2) Is in conformity with the provisions of this act, and in particular with the restrictions on the surrender of fugitive criminals contained in this act.

Publication and effect of order.

5. When an order applying this act, in the case of any foreign state, has been published in the "London Gazette," this act (after the date specified in the order, or if no date is specified, after the date of the publication) shall, so long as the order remains in force, but subject to the limitations, restrictions, conditions, exceptions, and qualifications, if any, contained in the order, apply in the case of such foreign state. An order in council shall be conclusive evidence that the arrangement therein referred to complies with the requisitions of this act, and that this act applies in the case of the foreign state mentioned in the order, and the validity of such order shall not be questioned in any legal proceedings whatever.

Liability of criminal to surrender.

6. When this act applies in the case of any foreign state, every fugitive criminal of that state who is in, or suspected of being in, any part of Her Majesty's dominions, or that part which is specified in the order applying this act (as the case may be), shall be liable to be apprehended and surrendered in manner provided by this act, whether the crime in respect of which the surrender is sought was committed before or after the date of the order, and whether there is or is not any concurrent jurisdiction in any court of Her Majesty's dominions over that crime.

Order of secretary of state for issue of warrant in United Kingdom if crime is not of a political character.

7. A requisition for the surrender of a fugitive criminal of any foreign state who is in, or suspected of being in, the United Kingdom, shall be made to a secretary of state by some person recognized by the secretary of state as a diplomatic representative of that foreign state. A secretary of state may, by order, under his hand and seal, signify to a police magistrate that such requisition has been made, and require him to issue his warrant for the apprehension of the fugitive criminal.

If the secretary of state is of the opinion that the offense is one of a political character, he may, if he thinks fit, refuse to send any such order, and may also, at any time, order a fugitive criminal accused or convicted of such offense to be discharged from custody.

Issue of warrant by police magistrate, justice, etc.

8. A warrant for the apprehension of a fugitive criminal, whether accused or convicted of crime, who is in, or suspected of being in, the United Kingdom, may be issued—

(1) By a police magistrate, on the receipt of the said order of the secre-

tary of state, and on such evidence as would, in his opinion, justify the issue of the warrant if the crime had been committed or the criminal convicted in England; and

(2) By a police magistrate, or any justice of the peace in any part of the United Kingdom, on such information or complaint and such evidence or after such proceedings as would, in the opinion of the person issuing the warrant, justify the issue of a warrant if the crime had been committed or the criminal convicted in that part of the United Kingdom in which he exercises jurisdiction.

Any person issuing a warrant under this section without an order from a secretary of state shall forthwith send a report of the fact of such issue, together with the evidence and information or complaint, or certified copies thereof, to a secretary of state, who may, if he think fit, order the warrant to be cancelled, and the person who has been apprehended on the warrant to be discharged.

A fugitive criminal, when apprehended on a warrant issued without the order of a secretary of state, shall be brought before some person having power to issue a warrant under this section, who shall, by warrant, order him to be brought, and the prisoner shall accordingly be brought, before a police magistrate.

A fugitive criminal apprehended on a warrant issued without the order of a secretary of state shall be discharged by the police magistrate, unless the police magistrate, within such reasonable time as, with reference to the circumstances of the case, he may fix, receives from a secretary of state an order signifying that a requisition has been made for the surrender of such criminal.

Hearing of case and evidence of political character of crime.

9. When a fugitive criminal is brought before the police magistrate, the police magistrate shall hear the case in the same manner, and have the same jurisdiction and powers, as near as may be, as if the prisoner were brought before him charged with an indictable offense committed in England.

The police magistrate shall receive any evidence which may be tendered to show that the crime of which the prisoner is accused, or alleged to have been convicted, is an offense of a political character, or is not an extradition crime.

Committal or discharge of prisoner.

10. In the case of a fugitive criminal accused of an extradition crime, if the foreign warrant authorizing the arrest of such criminal is duly authenticated, and such evidence is produced as (subject to the provisions of this act) would, according to the law of England, justify the committal for trial of the prisoner if the crime of which he is accused had been committed in England, the police magistrate shall commit him to prison; but otherwise shall order him to be discharged.

In the case of a fugitive criminal alleged to have been convicted of an extradition crime, if such evidence is produced as (subject to the provisions of this act) would, according to the law of England, prove that the prisoner was convicted of such crime, the police magistrate shall commit him to prison; but otherwise shall order him to be discharged.

If he commits such criminal to prison, he shall commit him to the Middlesex house of detention, or to some other prison in Middlesex, there to await the warrant of a secretary of state for his surrender; and shall forthwith send to a secretary of state a certificate of the committal, and such report upon the case as he may see fit.

Surrender of fugitive to foreign state by warrant of secretary of state.

11. If the police magistrate commits a fugitive criminal to prison, he shall inform such criminal that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of habeas corpus.

Upon the expiration of the said fifteen days, or, if a writ of habeas corpus is issued, after the decision of the court upon the return to the writ, as the case may be, or after such further period as may be allowed in either case by a secretary of state, it shall be lawful for a secretary of state, by a warrant under his hand and seal, to order the fugitive criminal (if not delivered on the decision of the court) to be surrendered to such person as may in his opinion be duly authorized to receive the fugitive criminal by the foreign state from which the requisition for the surrender proceeded, and such fugitive criminal shall be surrendered accordingly.

It shall be lawful for any person to whom such warrant is directed, and for the person so authorized as aforesaid to receive, hold in custody, and convey within the jurisdiction of such foreign state the criminal mentioned in the warrant; and if the criminal escapes out of any custody to which he may be delivered on or in pursuance of such warrant, it shall be lawful to retake him in the same manner as any person accused of any crime against the laws of that part of Her Majesty's dominions to which he escapes may be retaken upon an escape.

Discharge of persons apprehended if not conveyed out of United Kingdom within two months.

12. If the fugitive criminal who has been committed to prison is not surrendered and conveyed out of the United Kingdom within two months after such committal, or, if a writ of habeas corpus is issued after the decision of the court upon the return to the writ, it shall be lawful for any judge of one of Her Majesty's superior courts at Westminster, upon application made to him by or on behalf of the criminal, and upon proof that reasonable notice of the intention to make such application has been given to a secretary of state, to order the criminal to be discharged out of custody, unless sufficient cause is shown to the contrary.

Execution of warrant of police magistrate.

13. The warrant of the police magistrate issued in pursuance of this act may be executed in any part of the United Kingdom in the same manner as if the same had been originally issued or subsequently indorsed by a justice of the peace having jurisdiction in the place where the same is executed.

Depositions to be evidence.

[6 and 7 Vict., c. 76.]

14. Depositions or statements on oath, taken in a foreign state, and copies of such original depositions or statements, and foreign certificates of or judicial documents stating the fact of conviction, may, if duly authenticated, be received in evidence in proceedings under this act.

Authentication of depositions and warrants.

[29 and 30 Vict., c. 121.]

15. Foreign warrants and depositions or statements on oath, and copies thereof, and certificates of or judicial documents stating the fact of conviction, shall be deemed duly authenticated for the purposes of this act, if authenticated in manner provided for the time being by law or authenticated as follows:—

(1) If the warrant purports to be signed by a judge, magistrate, or officer of the foreign state where the same was issued;

(2) If the depositions or statements or the copies thereof purport to be certified under the hand of a judge, magistrate, or officer of the foreign state where the same were taken to be the original depositions or statements, or to be true copies thereof, as the case may require; and,

(3) If the certificate of or judicial document stating the fact of conviction purports to be certified by a judge, magistrate, or officer of the foreign state where the conviction took place; and.

If in every case the warrants, depositions, statements, copies, certificates, and judicial documents (as the case may be) are authenticated by the oath of some witness or by being sealed with the official seal of the minister of justice, or some other minister of state: And all courts of justice, justices, and magistrates shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof.

CRIMES COMMITTED AT SEA.

Jurisdiction as to crimes committed at sea.

16. Where the crime in respect of which the surrender of the fugitive is sought was committed on board any vessel on the high seas which comes into any port of the United Kingdom, the following provisions shall have effect:—

(1) This act shall be construed as if any stipendiary magistrate in England or Ireland, and any sheriff or sheriff substitute in Scotland, were substituted for the police magistrate throughout this act, except the part relating to the execution of the warrant of the police magistrate:

(2) The criminal may be committed to any prison to which the person committing him has power to commit persons accused of the like crime:

(3) If the fugitive criminal is apprehended on a warrant issued without the order of a secretary of state, he shall be brought before the stipendiary magistrate, sheriff, or sheriff substitute, who issued the warrant, or who has jurisdiction in the port where the vessel lies, or in the place nearest to that port.

FUGITIVE CRIMINALS IN BRITISH POSSESSIONS.

Proceedings as to fugitive criminals in British possessions.

17. This act, when applied by order in council, shall, unless it is otherwise provided by such order, extend to every British possession in the same manner as if throughout this act the British possession were substituted for the United Kingdom or England, as the case may require, but with the following modifications; namely,

(1) The requisition for the surrender of a fugitive criminal who is in or suspected of being in a British possession may be made to the governor of that British possession by any person recognized by that governor as a consul-general, consul, or vice-consul, or (if the fugitive criminal has escaped from a colony or dependency of the foreign state on behalf of which the requisition is made) as the governor of such colony or dependency:

(2) No warrant of a secretary of state shall be required, and all powers vested in or acts authorized or required to be done under this act by the police magistrate and the secretary of state, or either of them, in relation to the surrender of a fugitive criminal may be done by the governor of the British possession alone:

(3) Any prison in the British possession may be substituted for a prison in Middlesex:

(4) A judge of any court exercising in the British possession the like powers as the court of queen's bench exercises in England, may exercise the power of discharging a criminal when not conveyed, within two months, out of such British possession.

Saving of laws of British possessions.

18. If, by any law or ordinance, made before or after the passing of this act by the legislature of any British possession, provision is made for carrying into effect, within such possession, the surrender of fugitive criminals who are in, or suspected of being in, such British possession, Her Majesty may, by the order in council applying this act in the case of any foreign state, or by any subsequent order, either suspend the operation, within any such British possession, of this act, or of any part thereof, so far as it relates to such foreign state, and so long as such law or ordinance continues in force there, and no longer; or direct that such law or ordinance or any part thereof shall have effect in such British possession with or without modifications and alterations, as if it were part of this act.

GENERAL PROVISIONS.

Criminal surrendered by foreign state not triable for previous crime.

19. Where, in pursuance of any arrangement with a foreign state, any person accused or convicted of any crime which, if committed in England, would be one of the crimes described in the first schedule to this act, is surrendered by that foreign state, such person shall not, until he has been restored or had an opportunity of returning to such foreign state, be triable or tried for any offense committed prior to the surrender in any part of Her Majesty's dominions, other than such of the said crimes as may be proved by the facts on which the surrender is grounded.

As to use of forms in second schedule.

20. The forms set forth in the second schedule to this act, or forms as near thereto as circumstances admit, may be used in all matters to which such forms refer, and in the case of a British possession may be so used, *mutatis mutandis*, and when used shall be deemed to be valid and sufficient in law.

Revocation, etc., of order in council.

21. Her Majesty may, by order in council, revoke or alter, subject to the restrictions of this act, any order in council made in pursuance of this act, and all the provisions of this act with respect to the original order shall (so far as applicable) apply, *mutatis mutandis*, to any such new order.

Application of act in Channel Islands and Isle of Man.

22. This act (except so far as relates to the execution of warrants in the Channel Islands) shall extend to the Channel Islands and the Isle of Man in the same manner as if they were part of the United Kingdom; and the royal courts of the Channel Islands are hereby respectively authorized and required to register this act.

Saving for Indian treaties.

23. Nothing in this act shall affect the lawful powers of Her Majesty or of the governor-general of India in council to make treaties for the extradition of criminals with Indian native states, or with other Asiatic states conterminous with British India, or to carry into execution the provisions of any such treaties made either before or after the passing of this act.

Power of foreign state to obtain evidence in United Kingdom.

24. The testimony of any witness may be obtained in relation to any criminal matter pending in any court or tribunal in a foreign state in like manner as it may be obtained in relation to any civil matter under the act of the session of the nineteenth and twentieth years of the reign of her present Majesty, chapter one hundred and thirteen, intituled "An act to provide for taking evidence in Her Majesty's dominions in relation to civil and commercial matters pending before foreign tribunals;" and all the provisions of that act shall be construed as if the term civil matter included a criminal matter, and the term cause included a proceeding against a criminal: *Provided*, That nothing in this section shall apply in the case of any criminal matter of a political character.

Foreign state includes dependencies.

25. For the purposes of this act every colony, dependency, and constituent part of a foreign state and every vessel of that state shall (except where expressly mentioned as distinct in this act) be deemed to be within the jurisdiction of, and to be part of, such foreign state.

DEFINITION OF TERMS.

"British possession."

26. In this act, unless the context otherwise requires—

The term "British possession" means any colony, plantation, island, territory, or settlement within Her Majesty's dominions, and not within the United Kingdom, the Channel Islands, and Isle of Man; and all colonies, plantations, islands, territories, and settlements under one legislature, as hereinafter defined, are deemed to be one British possession:

"Legislature."

The term "legislature" means any person or persons who can exercise legislative authority in a British possession; and where there are local legislatures as well as a central legislature, means the central legislature only:

"Governor."

The term "governor" means any person or persons administering the government of a British possession, and includes the governor of any part of India:

"Extradition crime."

The term "extradition crime" means a crime which, if committed in England or within English jurisdiction, would be one of the crimes described in the first schedule to this act:

"Conviction."

The terms "conviction" and "convicted" do not include or refer to a conviction which, under foreign law, is a conviction for contumacy, but the term "accused person" includes a person so convicted for contumacy:

"Fugitive criminal."—"Fugitive criminal of a foreign state."

The term "fugitive criminal" means any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign state who is in, or suspected of being in, some part of Her Majesty's dominions; and the term "fugitive criminal of a foreign state" means a fugitive criminal accused or convicted of an extradition crime committed within the jurisdiction of that state:

"Secretary of state."

The term "secretary of state" means one of Her Majesty's principal secretaries of state:

"Police magistrate."

The term "police magistrate" means a chief magistrate of the metropolitan police courts, or one of the other magistrates of the metropolitan police court in Bow street:

"Justice of the peace."

The term "justice of the peace" includes, in Scotland, any sheriff, sheriff substitute, or magistrate:

"Warrant."

The term "warrant," in the case of any foreign state, includes any judicial document authorizing the arrest of a person accused or convicted of crime.

REPEAL OF ACTS.

Repeal of acts in third schedule.

27. The acts specified in the third schedule to this act are hereby repealed as to the whole of Her Majesty's dominions; and this act (with the exception of anything contained in it which is inconsistent with the treaties referred to in the acts so repealed) shall apply (as regards crimes committed either before or after the passing of this act) in the case of the foreign states with which those treaties are made, in the same manner as if an order in council referring to such treaties had been made in pursuance of this act, and as if such order had directed that every law and ordinance which is in force in any British possession with respect to such treaties should have effect as part of this act.

Provided that if any proceedings for or in relation to the surrender of a fugitive criminal have been commenced under the said acts previously to the repeal thereof, such proceedings may be completed, and the fugitive surrendered in the same manner as if this act had not passed.

SCHEDULES.

FIRST SCHEDULE.

List of crimes.

The following list of crimes is to be construed according to the law existing in England, or in a British possession (as the case may be), at the date of the alleged crime, whether by common law or by statute made before or after the passing of this act:

Murder, and attempt and conspiracy to murder.

Manslaughter.

Counterfeiting and altering money, and uttering counterfeit or altered money.

Forgery, counterfeiting, and altering, and uttering what is forged or counterfeited or altered.

Embezzlement and larceny.

Obtaining money or goods by false pretenses.

Crimes by bankrupts against bankruptcy law.

Fraud by bailee, banker, agent, factor, trustee, or director, or member, or public officer of any company made criminal by any act for the time being in force.

Rape.

Abduction.

Child-stealing.

Burglary and house-breaking.

Arson.

Robbery with violence.

Threats by letter or otherwise with intent to extort.

Piracy by law of nations.

Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.

Revolt or conspiracy to revolt by two or more persons on board ship on the high seas against the authority of the master.

SECOND SCHEDULE.

Form of order of secretary of state to the police magistrate.

To the chief magistrate of the metropolitan police courts, *or* other magistrate of the metropolitan police court, in Bow street [*or* the stipendiary magistrate at]:

Whereas in pursuance of an arrangement with , referred to in an order of Her Majesty in council, dated the day of , a requisition has been made to me, , one of Her Majesty's principal secretaries of state, by , the diplomatic representative of , for the surrender of , late of , accused [*or* convicted] of the commission of the crime of , within the jurisdiction of :

Now I hereby, by this my order, under my hand and seal, signify to you that such requisition has been made, and require you to issue your warrant for the apprehension of such fugitive, provided that the conditions of the extradition act, 1870, relating to the issue of such warrant, are in your judgment complied with.

Given under the hand and seal of the undersigned, one of Her Majesty's principal secretaries of state, this day of , 18 .

———— ————.

Form of warrant of apprehension by order of secretary of state.

Metropolitan police district [*or* county *or* borough of] , to wit:

To all and each of the constables of the metropolitan police force [*or* of the county *or* borough of]:

Whereas the right honorable , one of Her Majesty's principal secretaries of state, by order, under his hand and seal, hath signified to me that requisition hath been duly made to him for the surrender of , late of , accused [*or* convicted] of the commission of the crime of , within the jurisdiction of : This is therefore to command you, in Her Majesty's name, forthwith to apprehend the said , pursuant to the extradition act, 1870, wherever he may be found in the United Kingdom, or Isle of Man, and bring him before me or some other [*magistrate sitting in this court], to show cause why he should not be surrendered, in pursuance of the said extradition act, for which this shall be your warrant.

Given under my hand and seal, at [*Bow street, one of the police courts of the metropolis], this day of , 18 .

, J. P.

*Alter as required.

Form of warrant of apprehension without order of secretary of state.

Metropolitan police district [*or* county *or* borough of], to wit:
To all and each of the constables of the metropolitan police force, [*or* of the county *or* borough of]:

Whereas it has been shown to the undersigned, one of Her Majesty's justices of the peace in and for the metropolitan police district [*or* the said county *or* borough of], that , late of , is accused [*or* convicted] of the commission of the crime of , within the jurisdiction of : This is, therefore, to command you, in Her Majesty's name, to forthwith apprehend the said , and to bring him before me, or some other magistrate sitting at this court [*or* one of Her Majesty's justices of the peace in and for the county [*or* borough] of], to be further dealt with according to law, for which this shall be your warrant.

Given under my hand and seal at Bow street, one of the police courts of the metropolis [*or* in the county *or* borough aforesaid], this day of , 18 .

, J. P.

Form of warrant for bringing prisoner before the police magistrate.

County [*or* borough] of , to wit:
To , constable of the police force of , and to all other peace officers in the said county [*or* borough] of :

Whereas , late of , accused [*or* alleged to be convicted of] the commission of the crime of , within the jurisdiction of , has been apprehended, and brought before the undersigned, one of Her Majesty's justices of the peace in and for the said county [*or* borough] of ;

And whereas by the extradition act, 1870, he is required to be brought before the chief magistrate of the metropolitan police court, or one of the police magistrates of the metropolis sitting at Bow street, within the metropolitan police district [*or* the stipendiary magistrate for]: This is therefore to command you, the said constable, in Her Majesty's name, forthwith to take and convey the said to the metropolitan police district [*or* the said], and there carry him before the said chief magistrate or one of the police magistrates of the metropolis sitting at Bow street within the said district [*or* before a stipendiary magistrate sitting in the said], to show cause why he should not be surrendered, in pursuance of the extradition act, 1870, and otherwise to be dealt with in accordance with law, for which this shall be your warrant.

Given under my hand and seal at , in the county [*or* borough] aforesaid, this day of , 18 .

, J. P.

Form of warrant of committal.

Metropolitan police district [*or* the county *or* borough of], to wit: } To , one of the constables of the metropolitan police force [*or* of the police force of the county *or* borough of], and to the keeper of the .

Be it remembered that on this day of , in the year of our Lord , , late of , is brought before me, , the chief magistrate of the metropolitan police courts [*or* one of

the police magistrates of the metropolis], sitting at the police court in Bow street, within the metropolitan police district [*or* a stipendiary magistrate for], to show cause why he should not be surrendered in pursuance of the extradition act, 1870, on the ground of his being accused [*or* convicted] of the commission of the crime of within the jurisdiction of , and forasmuch as no sufficient cause has been shown to me why he should not be surrendered in pursuance of the said act: This is therefore to command you, the said constable, in Her Majesty's name forthwith to convey and deliver the body of the said into the custody of the said keeper of the at , and you, the said keeper, to receive the said into your custody, and him there safely keep until he is thence delivered pursuant to the provisions of the said extradition act, for which this shall be your warrant.

Given under my hand and seal at Bow street, one of the police courts of the metropolis [*or* at the said], this day of , 18 .

, J. P.

Form of warrant of secretary of state for surrender of fugitives.

To the keeper of and to :

Whereas , late of , accused [*or* convicted] of the commission of the crime of within the jurisdiction of ———, was delivered into the custody of you, , the keeper of , by warrant dated ———, pursuant to the extradition act, 1870:

Now, I do hereby, in pursuance of the said act, order you, the said keeper, to deliver the body of the said into the custody of the said , and I command you the said , to receive the said into your custody, and to convey him within the jurisdiction of the said ; and there place him in the custody of any person or persons appointed by the said to receive him, for which this shall be your warrant.

Given under my hand and seal of the undersigned, one of Her Majesty's principal secretaries of state, this day of .

——— ———.

THIRD SCHEDULE.

Year and chapter.	Title.
6 and 7 Vict., c. 75 ..	An act for giving effect to a convention between Her Majesty and the King of the French for the apprehension of certain offenders.
6 and 7 Vict., c. 76 ..	An act for giving effect to a treaty between Her Majesty and the United States of America for the apprehension of certain offenders.
8 and 9 Vict., c. 120.	An act for facilitating execution of the treaties with France and the United States of America for the apprehension of certain offenders.
25 and 26 Vict., c. 70.	An act for giving effect to a convention between Her Majesty and the King of Denmark for the mutual surrender of criminals.
29 and 30 Vict., c. 121.	An act for the amendment of the law relating to treaties of extradition.

EXTRADITION ACT (1873).

[36 and 37 Vict., c. 60.]

AN ACT to amend the extradition act, 1870.

(5TH AUGUST, 1873.)

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Construction of act and short title.

[33 and 34 Vict., c. 52.]

1. This act shall be construed as one with the extradition act, 1870 (in this act referred to as the principal act), and the principal act and this act may be cited together as the extradition acts, 1870 and, 1873, and this act may be cited alone as the extradition act, 1873.

Explanation of sect. 6 of 33 and 34 Vict., c. 52.

2. Whereas by section six of the principal act, it is enacted as follows:

"Where this act applies in the case of any foreign state, every fugitive criminal of that state who is in or suspected of being in any part of Her Majesty's dominions, or that part which is specified in the order applying this act (as the case may be), shall be liable to be apprehended and surrendered in manner provided by this act, whether the crime in respect of which the surrender is sought was committed before or after the date of the order, and whether there is or is not any concurrent jurisdiction in any court of Her Majesty's dominions over that crime."

And whereas doubts have arisen as to the application of the said section to crimes committed before the passing of the principal act, and it is expedient to remove such doubts; it is therefore hereby declared that—

A crime committed before the date of the order includes in the said section a crime committed before the passing of the principal act, and the principal act and this act shall be construed accordingly.

Liability of accessories to be surrendered.

3. Whereas a person who is accessory before or after the fact, or counsels, procures, commands, aids, or abets the commission of any indictable offence, is by English law liable to be tried and punished as if he were the principal offender, but doubts have arisen whether such person as well as the principal offender can be surrendered under the principal act, and it is expedient to remove such doubts; it is therefore hereby declared that—

Every person who is accused or convicted of having counselled, procured, commanded, aided, or abetted the commission of any extradition crime, or of being accessory before or after the fact to any extradition crime, shall be deemed for the purposes of the principal act and this act to be accused or convicted of having committed such crime, and shall be liable to be apprehended and surrendered accordingly.

Explanation of sect. 14 *of* 33 *and* 34 *Vict., c.* 52, *as to statements on oath, including affirmations.*

4. Be it declared, that the provisions of the principal act relating to depositions and statements on oath taken in a foreign state, and copies of such original depositions and statements, do and shall extend to affirmations taken in a foreign state, and copies of such affirmations.

Power of taking evidence in United Kingdom for foreign criminal matters.

5. A secretary of state may, by order under his hand and seal, require a police magistrate or a justice of the peace to take evidence for the purposes of any criminal matter pending in any court or tribunal in any foreign state; and the police magistrate or justice of the peace, upon the receipt of such order, shall take the evidence of every witness appearing before him for the purpose in like manner as if such witness appeared on a charge against some defendant for an indictable offense, and shall certify at the foot of the deposition so taken that such evidence was taken before him, and shall transmit the same to the secretary of state; such evidence may be taken in the presence or absence of the person charged, if any, and the fact of such presence or absence shall be stated in such deposition.

Any person may, after payment or tender to him of a reasonable sum for his costs and expenses in this behalf, be compelled, for the purposes of this section, to attend and give evidence and answer questions and produce documents, in like manner and subject to like conditions as he may in the case of a charge preferred for an indictable offense.

Every person who wilfully gives false evidence before a police magistrate or justice of the peace under this section shall be guilty of perjury.

Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

Explanation of sect. 16 *of* 33 *and* 34 *Vict., c.* 52.

6. The jurisdiction conferred by section sixteen of the principal act on a stipendiary magistrate, and a sheriff or sheriff substitute, shall be deemed to be in addition to, and not in derogation or exclusion of, the jurisdiction of the police magistrate.

Explanation of diplomatic representative and consul.

7. For the purposes of the principal act and this act a diplomatic representative of a foreign state shall be deemed to include any person recognized by the secretary of state as a consul-general of that state, and a consul or vice-consul shall be deemed to include any person recognized by the governor of a British possession as a consular officer of a foreign state.

Addition to list of crimes in schedule.

8. The principal act shall be construed as if there were included in the first schedule to that act the list of crimes contained in the schedule to this act.

SCHEDULE.

List of crimes.

The following list of crimes is to be construed according to the law existing in England or in a British possession (as the case may be) at the date of the alleged crime, whether by common law or by statute made before or after the passing of this act:

Kidnapping and false imprisonment.

Perjury, and subornation of perjury, whether under common or statute law.

[24 and 25 Vict., c. 96, etc.]

Any indictable offence under the larceny act, 1861, or any act amending or substituted for the same, which is not included in the first schedule to the principal act.

Any indictable offence under the act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-seven, "To consolidate and amend the statute law of England and Ireland relating to malicious injuries to property," or any act amending or substituted for the same, which is not included in the first schedule to the principal act.

Any indictable offence under the act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-eight, "To consolidate and amend the statute law of England and Ireland relating to indictable offences by forgery," or any act amending or substituted for the same, which is not included in the first schedule to the principal act.

Any indictable offence under the act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-nine, "To consolidate and amend the statute law of the United Kingdom against offences relating to the coin," or any act amending or substituted for the same, which is not included in the first schedule to the principal act.

Any indictable offence under the act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter one hundred, "To consolidate and amend the statute law of England and Ireland relating to offences against the person," or any act amending or substituted for the same, which is not included in the first schedule to the principal act.

Any indictable offence under the laws for the time being in force in relation to bankruptcy, which is not included in the first schedule to the principal act.

Annexed is a form of complaint made by messengers of foreign legations in London to secure the temporary detention of fugitives whose extradition is about to be demanded.

Metropolitan police district, to wit:

The information of of taken on oath this day of in the year of our Lord one thousand eight hundred and , at the Bow street police court, in the county of Middlesex, and within the metropolitan police district, before me, the undersigned, one of the magistrates of the police courts of the metropolis, sitting at the police court aforesaid,

Who saith that , late of , is accused [*or* convicted] of the commission of the crime of , within the jurisdiction of , and now suspected of being in the United Kingdom. I make this application on behalf of the Government.

I produce

I am informed and verily believe that a warrant has been issued in for the arrest of the accused; that the said government will demand h extradition in due course, and that there are reasonable grounds for supposing the accused may escape during the time necessary to present the diplomatic requisition for h surrender, and I therefore pray that a provisional warrant may issue under the provisions of 33 and 34 V., c. 52, s. 8.

Sworn before me, the day and year first above mentioned, at the police court aforesaid.

II.—CANADIAN LEGISLATION.

CHAPTER 142 OF THE REVISED STATUTES OF CANADA.

An ACT respecting the extradition of fugitive criminals.

[A. D. 1886.]

Her Majesty, by and with the advice and consent of the senate and house of commons of Canada, enacts as follows:

Short title.

1. This act may be cited as "The Extradition Act." (40 V., c. 25, s. 24.)

Interpretation.

2. In this act, unless the context otherwise requires—

"*Extradition arrangement.*"

(*a*) The expression "extradition arrangement," or "arrangement," means a treaty, convention, or arrangement made by Her Majesty with a foreign state for the surrender of fugitive criminals, and which extends to Canada;

"*Extradition crime.*"

(*b*) The expression "extradition crime" may mean any crime which, if committed in Canada, or within Canadian jurisdiction, would be one of the crimes described in the first schedule to this act,—and, in the application of this act to the case of any extradition arrangement, means any crime described in such arrangement, whether comprised in the said schedule or not;

"*Conviction*"—"*Convicted*"—"*Accused person.*"

(*c*) The expressions "conviction" and "convicted" do not include the case of a condemnation under foreign law by reason of contumacy; but the expression "accused person" includes a person so condemned;

"*Fugitive criminal.*"

(*d*) The expression "fugitive" and "fugitive criminal" mean a person being, or suspected of being, in Canada who is accused or convicted of an extradition crime committed within the jurisdiction of any foreign state;

"Foreign state."

(*e*) The expression "foreign state" includes every colony, dependency, and constituent part of the foreign state; and every vessel of any such state shall be deemed to be within the jurisdiction of and to be part of the state;

"Warrant."

(*f*) The expression "warrant," in the case of a foreign state, includes any judicial document authorizing the arrest of a person accused or convicted of crime;

"Judge."

(*g*) The expression "judge" includes any person authorized to act judicially in extradition matters. (40 V., c. 25, s. 1.)

APPLICATION OF ACT.

As to existing arrangements.

3. In the case of any foreign state with which there is, at or after the time when this act comes into force, an extradition arrangement, this act shall apply during the continuance of such arrangement; but no provision of this act which is inconsistent with any of the terms of the arrangement shall have effect to contravene the arrangement; and this act shall be so read and construed as to provide for the execution of the arrangement.

As to limitations, qualifications, and exceptions.

(2) In the case of any foreign state with respect to which the application to the United Kingdom of the act of the parliament of the United Kingdom, passed in the year one thousand eight hundred and seventy, and intituled "*An act for amending the law relating to the extradition of criminals,*" is made subject to any limitation, condition, qualification, or exception the governor in council shall make the application of this act, by virtue of this section, subject to such limitation, condition, qualification, or exception.

Orders under this act may be revoked.

(3) The governor in council may at any time, revoke or alter, subject to the restrictions of this act, any order made by him in council under this act, and all the provisions of this act with respect to the original order shall, so far as applicable, apply *mutatis mutandis* to the new order. (40 V., c. 25, s. 4.)

If the application of this act depends on an order in council.

4. This act, so far as its application in the case of any foreign state, depends on or is affected by any order in council made under this act, or referred to therein, shall apply, or its application shall be affected from and after the time specified in the order, or, if no time is specified, after the date of the publication of the order in the *Canada Gazette:*

Publication of orders in council.

(2) Any order of Her Majesty in council, referred to in this act, and any order of the governor in council made under this act, and any extradition arrangement not already published in the *Canada Gazette*, shall be, as soon as possible, published in the *Canada Gazette* and laid before both houses of Parliament:

Effect of publication in the Canada Gazette.

(3) The publication in the *Canada Gazette* of an extradition arrangement or an order in council shall be evidence of such arrangement or order, and of the terms thereof, and of the application of this act, pursuant and subject thereto; and the court or judge shall take judicial notice, without proof, of such arrangement or order, and the validity of the order and the application of this act, pursuant and subject thereto, shall not be questioned. (40 V., c. 25, s. 5.)

JUDGES AND COMMISSIONERS.

What judges may act in cases under this act.

5. All judges of the superior courts and of the county courts of any province, and all commissioners who are, from time to time, appointed for the purpose, in any province by the governor in council under the great seal of Canada, by virtue of this act, are authorized to act judicially in extradition matters under this act within the province; and every such person shall, for the purposes of this act, have all the powers and jurisdiction of any judge or magistrate of the province:

No habeas corpus power.

(2) Nothing in this section shall be construed to confer on any judge any jurisdiction in habeas corpus matters. (40 V., c. 25, s. 8.)

EXTRADITION FROM CANADA.

On what grounds a warrant may issue.

6. Whenever this act applies a judge may issue his warrant for the apprehension of a fugitive on a foreign warrant of arrest, or an information or complaint laid before him, and on such evidence or after such proceedings, as in his opinion would, subject to the provisions of this act, justify the issue of his warrant if the crime of which the fugitive is accused or alleged to have been convicted had been committed in Canada:

Report to minister of justice.

(2) The judge shall forthwith send a report of the fact of the issue of the warrant, together with certified copies of the evidence and foreign warrant, information, or complaint, to the minister of justice. (40 V., c. 25, s. 11.)

Execution of warrant.

7. A warrant issued under this act may be executed in any part of Canada, in the same manner as if it had been originally issued, or subsequently indorsed, by a justice of the peace having jurisdiction in the place where it is executed. (40 V., c. 25, s. 10.)

Surrender not to defend on time when the offence was committed, etc.

8. Every fugitive criminal of a foreign state, in the case of which state this act applies, shall be liable to be apprehended, committed, and surrendered in the same manner provided in this act, whether the crime or conviction in respect of which the surrender is sought was committed or took place before or after the date of the arrangement or of the coming into force of this act, or of the application of this act in the case of such state, and whether there is or is not any criminal jurisdiction in any court of Her Majesty's dominions over the fugitive in respect of the crime. (40 V., c. 25, s. 7.)

Fugitive to be brought before the judge.

9. The fugitive shall be brought before a judge, who shall, subject to the provisions of this act, hear the case in the same manner, as nearly as may be, as if the fugitive was brought before a justice of the peace charged with an indictable offence committed in Canada:

Evidence of the charge.

(2) The judge shall receive upon oath, or affirmation if affirmation is allowed by law, the evidence of any witness tendered to show the truth of the charge or the fact of the conviction:

Evidence that the crime is not an extradition crime.

(3) The judge shall receive, in like manner, any evidence tendered to show that the crime of which the fugitive is accused or alleged to have been convicted is an offense of a political character, or is, for any other reason, not an extradition crime; or that the proceedings are being taken with a view to prosecute or punish him for an offence of a political character. (40 V., c. 25, s. 12.)

Depositions taken out of Canada, when admissible in evidence.

10. Depositions or statements taken in a foreign state on oath, or on affirmation where affirmation is allowed by the law of the state, and copies of such depositions or statements, and foreign certificates of, or judicial documents stating the fact of conviction, may, if duly authenticated, be received in evidence in proceedings under this act:

When such depositions are to be deemed duly authenticated.

(2) Such papers shall be deemed duly authenticated if authenticated in manner provided, for the time being, by law, or if authenticated as follows:

(*a*) If the warrant purports to be signed by, or the certificate purports to be certified by, or the depositions or statements, or the copies thereof, purport to be certified to be the originals or true copies, by a judge, magistrate, or officer of the foreign state;

(*b*) And if the papers are authenticated by the oath or affirmation of some witness, or by being sealed with the official seal of the minister of justice, or some other minister of the foreign state, or of a colony, dependency, or constituent part of the foreign state, of which seal the judge shall take judicial notice without proof. (40 V., c. 25, s. 9.)

What evidence shall be sufficient to justify committal.

11. If, in the case of a fugitive alleged to have been convicted of an extradition crime, such evidence is produced as would, according to the law of Canada, subject to the provisions of this act, prove that he was so convicted, and if, in the case of a fugitive accused of an extradition crime, such evidence is produced as would, according to the law of Canada, subject to the provisions of this act, justify his committal for trial if the crime had been committed in Canada, the judge shall issue his warrant for the committal of the fugitive to the nearest convenient prison, there to remain until surrendered to the foreign state, or discharged according to law; but otherwise the judge shall order him to be discharged. (40 V., c. 25, s. 13.)

Duty of judge (1) *to fugitive;* (2) *to minister of justice.*

12. If the judge commits a fugitive to prison, he shall, on such committal—

(*a*) Inform him that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of *habeas corpus;* and

(*b*) Transmit to the minister of justice a certificate of the committal, with a copy of all the evidence taken before him not already so transmitted, and such report upon the case as he thinks fit. (40 V., c. 25, s. 14.)

By whom requisition for surrender may be made.

13. A requisition for the surrender of a fugitive criminal of a foreign state who is, or is suspected to be in Canada, may be made to the minister of justice by any person recognized by him as a consular officer of that state resident at Ottawa, or by any minister of that state communicating with the minister of justice through the diplomatic representative of Her Majesty in that state, or if neither of these modes is convenient, then in such other mode as is settled by arrangement. (40 V., c. 25, s. 15.)

When the fugitive shall not be liable to surrender.

14. No fugitive shall be liable to surrender under this act if it appears—

(*a*) That the offence in respect of which proceedings are taken under this act is one of a political character; or,

(*b*) That such proceedings are being taken with a view to prosecute or punish him for an offence of a political character. (40 V., c. 25, s. 6.)

In cases specified minister may refuse to make order of surrender and may cancel order already made.

15. If the minister of justice at any time determines—

(*a*) That the offence in respect of which proceedings are being taken under this act is one of a political character;

(*b*) That the proceedings are, in fact, being taken with a view to try or punish the fugitive for an offence of a political character; or,

(*c*) That the foreign state does not intend to make a requisition for surrender—

He may refuse to make an order for surrender, and may, by order under his hand and seal, cancel any order made by him, or any warrant issued by a judge under this act, and order the fugitive to be discharged out of custody on any committal made under this act; and the fugitive shall be discharged accordingly. (40 V., c. 25, s. 16; 45 V., c. 20, s. 1.)

Delay before surrender.

16. A fugitive shall not be surrendered until after the expiration of fifteen days from the date of his committal for surrender, or if a writ of *habeas corpus* is issued, until after the decision of the court remanding him:

If fugitive is an offender under Canadian law.

(2) A fugitive who has been accused of an offence within Canadian jurisdiction, not being the offence for which his surrender is asked, or who is undergoing sentence under a conviction in Canada, shall not be surrendered until after he has been discharged, whether by acquittal or by expiration of his sentence, or otherwise. (40 V., c. 25, s. 17.)

Minister may order surrender of fugitive to officer of a foreign state.

17. Subject to the provisions of this act, the minister of justice, upon the requisition of the foreign state, may, under his hand and seal, order a fugitive who has been committed for surrender to be surrendered to the person or persons who are, in his opinion, duly authorized to receive him in the name and on behalf of the foreign state, and he shall be so surrendered accordingly:

Powers of such officer.

(2) Any person to whom such order is directed may deliver, and the person so authorized may receive, hold in custody, and convey the fugitive within the jurisdiction of the foreign state; and if he escapes out of any custody to which he is delivered, on or in pursuance of such order, he may be retaken in the same manner as any person accused or convicted of any crime against the laws of Canada may be retaken on an escape. (40 V., c. 25, s. 18.)

Property found on fugitive.

18. Everything found in the possession of the fugitive at the time of his arrest, which may be material as evidence in making proof of the crime, may be delivered up with the fugitive on his surrender, subject to all rights of third persons with regard thereto. (40 V., c. 25, s. 19.)

Fugitive to be conveyed out of Canada within a certain time; or may be released by habeas corpus.

19. If a fugitive is not surrendered and conveyed out of Canada within two months after his committal for surrender, or if a writ of *habeas corpus* is issued, within two months after the decision of the court on such writ, over and above, in either case, the time required to convey him from the prison to which he has been committed by the readiest way out of Canada, any one or more of the judges of the superior courts of the province in which such person is confined, having power to grant a writ of *habeas corpus*, may, upon application made to him or them by or on behalf of the fugitive, and on proof that reasonable notice of the intention to make such application has been given to the minister of justice, order the fugitive to be discharged out of custody, unless sufficient cause is shown against such discharge. (40 V., c. 25, s. 20).

Forms valid.

20. The forms set forth in the second schedule to this act, or forms as near thereto as circumstances admit of, may be used in the matters to which such forms refer, and, when used, shall be deemed valid. (40 V., c. 25, s. 21.)

EXTRADITION FROM A FOREIGN STATE.

Requisition for a fugitive from Canada, how made.

21. A requisition for the surrender of a fugitive criminal from Canada, who is or is suspected to be in any foreign state with which there is an extradition arrangement, may be made by the minister of justice to a consular officer of that state resident at Ottawa, or to the minister of justice or any other minister of that state, through the diplomatic representative of Her Majesty in that state; or, if neither of these modes is convenient, then in such other mode as is settled by arrangement. (40 V., c. 25, s. 22.)

Conveyance of fugitive surrendered.

22. Any person accused or convicted of an extradition crime, who is surrendered by a foreign state, may, under the warrant for his surrender issued in such foreign state, be brought into Canada and delivered to the proper authorities, to be dealt with according to law.

Fugitive surrendered by a foreign state not punishable contrary to arrangement.

23. Whenever any person accused or convicted of an extradition crime is surrendered by a foreign state, in pursuance of any extradition arrangement, such person shall not, until after he has been restored or has had an opportunity of returning to the foreign state within the meaning of the arrangement, be subject in contravention of any of the terms of the arrangement, to any prosecution or punishment in Canada for any other offence committed prior to his surrender, for which he should not, under the arrangement, be prosecuted. (40 V., c. 25, s. 23.)

LIST OF CRIMES.

How list of crimes in schedule shall be construed.

24. The list of crimes in the first schedule to this act shall be construed according to the law existing in Canada at the date of the alleged crime, whether by common law or by statute made before or after the passing of this act, and as including only such crimes, of the descriptions comprised in the list, as are, under that law, indictable offences. (40 V., c. 25, second schedule, *part.*)

FIRST SCHEDULE.

List of crimes.

(1) Murder, or attempt or conspiracy to murder.

(2) Manslaughter.

(3) Counterfeiting or altering money, and uttering counterfeit or altered money.

(4) Forgery, counterfeiting or altering, or uttering what is forged, counterfeited, or altered.

(5) Larceny.

(6) Embezzlement.

(7) Obtaining money or goods or valuable securities by false pretences.

(8) Crimes against bankruptcy or insolvency law.

(9) Fraud by a bailee, banker, agent, factor, trustee, or by a director or member or officer of any company, which fraud is made criminal by any act for the time being in force.

(10) Rape.

(11) Abduction.

(12) Child stealing.

(13) Kidnapping.

(14) False imprisonment.

(15) Burglary, house-breaking, or shop-breaking.

(16) Arson.

(17) Robbery.

(18) Threats, by letter or otherwise, with intent to extort.

(19) Perjury or subornation of perjury.

(20) Piracy by municipal law or law of nations, committed on board of or against a vessel of a foreign state.

(21) Criminal scuttling or destroying such a vessel at sea, whether on the high seas or on the Great Lakes of North America, or attempting or conspiring to do so.

(22) Assault on board such vessel at sea, whether on the high seas or on the Great Lakes of North America, with intent to destroy life or to do grievous bodily harm.

(23) Revolt, or conspiracy to revolt, by two or more persons on board such a vessel at sea, whether on the high seas or on the Great Lakes of North America, against the authority of the master.

(24) Any offence under either of the following acts, and not included in any foregoing portion of this schedule:—

(*a*) "An act respecting offences against the person."

(*b*) "The larceny act."

(*c*) "An act respecting forgery.

(*d*) "An act respecting offences relating to the coin."

(*e*) "An act respecting malicious injuries to property."

(25) Any offence which is, in the case of the principal offender, included in any foregoing portion of this schedule, and for which the fugitive criminal, though not the principal, is liable to be tried or punished as if he were the principal. (40 V., c. 25, second schedule, *part.*)

SECOND SCHEDULE.

FORM ONE.

Form of warrant of apprehension.

——;

To wit, to all and each of the constables of

Whereas it has been shown to the undersigned, a judge under "*the extradition act,*" that late of is accused (*or* convicted) of the crime of within the jurisdiction of

This is therefore to command you, in Her Majesty's name, forthwith to apprehend the said and to bring him before me, or some other judge under the said act, to be further dealt with according to law; for which this shall be your warrant.

Given under my hand and seal at this day of A. D.

FORM TWO.

Form of warrant of committal.

——;

To wit, to one of the constables of and to the keeper of the at

Be it remembered that on this day of in the year at is brought before me a judge under "*the extradition act,*" who has been apprehended under the said act, to be dealt with according to law; and forasmuch as I have determined that he should be surrendered in pursuance of the said act, on the ground of his being accused (*or* convicted) of the crime of within the jurisdiction of

This is therefore to command you, the said constable, in Her Majesty's name, forthwith to convey and deliver the said into the custody of the keeper of the at and you, the said keeper, to receive the said into your custody, and him there safely to keep until he is thence delivered pursuant to the provisions of the said act, for which this shall be your warrant.

Given under my hand and seal at this day of A. D.

FORM THREE.

Form of order of minister of justice for surrender.

To the keeper of the at and to

Whereas late of accused (*or* convicted) of the crime of within the jurisdiction of was delivered into the custody of you, the keeper of the at by warrant dated pursuant to "*the extradition act.*"

Now I do hereby, in pursuance of the said act, order you, the said keeper, to deliver the said into the custody of the said ; and I command you, the said to receive the said into your custody, and to convey him within the jurisdiction of the said and there place him in the custody of any person or persons (*or* of) appointed by the said to receive him; for which this shall be your warrant.

Given under the hand and seal of the undersigned minister of justice of Canada, this day of A. D. . (40 V., c. 25, third schedule).

AN ACT TO EXTEND THE PROVISIONS OF THE EXTRADITION ACT.

[52 Vict., c. 36.]

[Assented to 2nd May, 1889.]

Whereas it is expedient to make further provision for the extradition from Canada of fugitive offenders from foreign states: Therefore Her Majesty, by and with the advice and consent of the senate and house of commons of Canada, enacts as follows:

Fugitive offenders may be surrendered though there is no convention—Provisions of Revised Statutes of Canada, c. 142, to govern.

1. In case no extradition arrangement, within the meaning of "*the extradition act*," exists between Her Majesty and a foreign state, or in case such an extradition arrangement, extending to Canada, exists between Her Majesty and a foreign state, but does not include the crimes mentioned in the schedule to this act, it shall, nevertheless, be lawful for the minister of justice to issue his warrant for the surrender to such foreign state of any fugitive offender from such foreign state charged with or convicted of any of the crimes mentioned in the schedule to this act: Provided always, that the arrest, committal, detention, surrender, and conveyance out of Canada of such fugitive offender shall be governed by the provisions of "*the extradition act*," and that all the provisions of the said act shall apply to all steps and proceedings in relation to such arrest, committal, detention, surrender, and conveyance out of Canada in the same manner and to the same extent as they would apply if the said crimes were included and specified in an extradition arrangement between Her Majesty and the foreign state, extending to Canada.

As to costs.

2. All expenses connected with the arrest, committal, detention, surrender, and conveyance out of Canada of any fugitive offender under this act shall be borne by the foreign state applying for the surrender of such fugitive offender.

Law of Canada to govern as to crimes.

3. The list of crimes in the schedule to this act shall be construed according to the law existing in Canada at the date of the commission of the alleged crime, whether by common law or by statute made before or after the coming into force of this act, and as including only such crimes, of the description comprised in the list, as are, under that law, indictable offences:

Application of act.

(2) The provisions of this act shall apply to any crime mentioned in the said schedule, committed after the coming into force of this act, as regards any foreign state as hereinafter provided.

Coming into force of act.—Abrogation by proclamation.

4. The foregoing provisions of this act shall not come into force with respect to fugitive offenders from any foreign state until this act shall have been declared by proclamation of the governor-general to be in force and effect as regards such foreign state, from and after a day to be named in such proclamation; and the provisions of this act shall cease to have any force or effect with respect to fugitive offenders from any foreign state, if by proclamation the governor-general declares this act to be no longer in operation as regards such foreign state.

Day to be named.

(2) The day from and after which, in such case, the provisions of this act shall cease to have force and effect shall be a day to be named in such proclamation.

When warrant may not be issued.

5. This act shall not authorize the issue of a warrant for the extradition of any person under the provisions of this statute, to any state or country in which by the law in force in such state or country, such person may be tried after such extradition for any other offence than that for which he has been extradited, unless an assurance shall first have been given by the executive authority of such state or country, that the person whose extradition has been claimed shall not be tried for any other offence than that on account of which such extradition has been claimed.

SCHEDULE.

(1) Murder, or attempt or conspiracy to murder.
(2) Manslaughter.
(3) Counterfeiting or altering money and uttering counterfeit or altered money.
(4) Forgery, counterfeiting or altering, or uttering what is forged, counterfeited or altered.
(5) Larceny.
(6) Embezzlement.
(7) Obtaining money or goods or valuable securities by false pretences.
(8) Rape.
(9) Abduction; indecent assault.
(10) Child stealing.
(11) Kidnapping.
(12) Burglary, house-breaking or shop-breaking.
(13) Arson.
(14) Robbery.
(15) Fraud committed by a bailee, banker, agent, factor, trustee or member or public officer of any company or municipal corporation, made criminal by any law for the time being in force.

(16) Any malicious act done with intent to endanger persons in a railway train.

(17) Piracy by municipal law or law of nations, committed on board of or against a vessel of a foreign state.

(18) Criminal scuttling or destroying such a vessel at sea, whether on the high seas or on the Great Lakes of North America, or attempting or conspiring to do so.

(19) Assault on board such a vessel at sea, whether on the high seas or on the Great Lakes of North America, with intent to destroy life or to do grievous bodily harm.

(20) Revolt, or conspiracy to revolt, by two or more persons on board such a vessel at sea, whether on the high seas or on the Great Lakes of North America, against the authority of the master.

(21) Administering drugs or using instruments with intent to procure the miscarriage of a woman.

(22) Any offence which is, in the case of the principal offender, included in any foregoing portion of this schedule, and for which the fugitive criminal, though not the principal, is liable to be tried or punished as if he were the principal.

NOTE.—This act has not yet come into force, not having been as yet allowed by the Imperial Government.

HAWAII.

February 20, 1889, Mr. Merrill made the following report:

SIR: Referring to Department circular of November 26, 1888, respecting international extradition, I have the honor to inform you that the subject, so far as it relates to the Kingdom of Hawaii, is fully discussed in the case of John W. McCarthy, decided by the supreme court of Hawaii, in February, 1886, and as in that decision all the laws of the kingdom and rules of the Government, appertaining to the subject of extradition, are quoted and commented on by all the judges, I enclose copies of the same as the best authoritative information for the Department in the matter.

The only conventional obligation of the Government of Hawaii to extradite is with the United States, and is contained in Article XIV of the treaty with the United States, ratified August 19, 1850.

I have, etc.,

GEO. W. MERRILL.

[Inclosure 1—Hawaiian Gazette, Tuesday, February 10, 1886.]

Supreme Court of the Hawaiian Islands.—In the matter of John W. McCarthy. Tuesday, February 9th. Before Judd, C. J., McCully and Preston, J. J.

Opinion of the court by PRESTON, *J.*:

On the 25th day of January last an information was laid by the attorney-general before the chief justice, alleging that John W. McCarthy was guilty of the crime of embezzlement as a public officer (clerk of the supreme court of the State of California), and that the grand jury for the city and

county of San Francisco had, on the 15th day of January, found a true bill of indictment in the superior court of the said city and county against the said McCarthy for such crime, and that a warrant had been issued from the said court for the apprehension of the said McCarthy, and that said McCarthy had left San Francisco and was then residing in Honolulu, and that a requisition for the surrender of the said McCarthy, under the hand of the governor of the State of California and the great seal of the State, had been sent to His Majesty's Government, and praying for an order from the chief-justice for the arrest of the said McCarthy, in order that he might be delivered to the officer sent to receive him.

The chief-justice thereupon caused a warrant to be issued, under which McCarthy was arrested and brought before his honor on the 26th.

The attorney-general appeared on behalf of the prosecution.

Mr. Whiting appeared for the prisoner and pleaded to the jurisdiction on the grounds—

1st. That the warrant issued sets forth no crime or accusation of crime.

2nd. That the crime for which extradition is sought is "embezzlement," and that "embezzlement" committed in a foreign country, viz, the United States, is not an offense or crime for which the person can be extradited.

3rd. That the demand for extradition is made through the governor of the State of California, and that there is no authority in law for said governor to make such demand.

4th. That the affidavit and complaint are made by the attorney-general of this kingdom, and that the attorney-general can not properly or legally make such complaint or be complainant herein.

The chief-justice overruled the pleas, and on February 1st the case came up for hearing and evidence was introduced. It consisted of—

1. A request by George Stoneman, governor of the State of California, attested by the secretary of state of California, under the great seal of the State, dated the 16th of January, 1886, to "His Royal Highness the King of the Hawaiian Islands," for the apprehension and delivery to one Joseph Bee, who is duly authorized to receive him, of one John W. McCarthy, who stands charged with the crime of embezzlement committed within the county of San Francisco.

2. Copy of an indictment in the superior court of the city and county of San Francisco, State of California, against the said John W. McCarthy, in which he is accused by the grand jury of the city and county of San Francisco with the crime of embezzlement, in that he was on or about the 28th day of February, 1885, the duly elected, qualified, and acting clerk of the supreme court of the State of California, and by virtue of his trust as such officer there came into his possession and control ($550) five hundred and fifty dollars of the property of the State of California, and which he, at the city and county of San Francisco, on the 28th of February, 1885, wilfully unlawfully, fraudulently, and feloniously, did appropriate to his own use, contrary to the due and lawful execution of his said trust and contrary to the form, &c., of the statute, &c. This is signed by J. N. E. Wilson, district attorney, endorsed a "true bill" by E. M. Burns, foreman of the grand jury, and certified by Jas. J. Flynn, the clerk of the superior court, as having been presented in open court by the foreman of the grand jury, and filed as a record of said court on the 15th of January, 1886.

3. Copy of a bench-warrant issued on the indictment by order of the court, and attested by Jas. J. Flynn, the clerk, dated the 15th of January, 1886, for the arrest forthwith of said John W. McCarthy.

4. Original affidavit or return of William Broughton, a police officer of the city and county of San Francisco, that he received the annexed warrant for the arrest of John W. McCarthy and that he made diligent search for him, &c., and avers upon information and belief that he has fled from justice in the State of California, and has taken refuge in the Kingdom of Hawaii. This is sworn to before a deputy clerk of the superior court. These three last papers, to wit, the indictment, bench-warrant, and affidavit of William Broughton, are certified to by Jas. J. Flynn, clerk of the said superior court, under the said seal of the said court, as a full and complete exemplification of the papers and proceedings in the case of The People of the State of California *vs.* J. W. McCarthy. The genuineness of this certificate and signature is attested by M. A. Edmunds, presiding judge of the superior court of the city and county of San Francisco, and this is in turn certified to and authenticated by Jas. J. Flynn, clerk as aforesaid. The genuineness of the seals and of the signatures of Judge Edmunds and Jas. J. Flynn, the clerk, were proved to the satisfaction of the chief-justice by competent evidence. The testimony of Joseph Bee, a police officer of the city and county of San Francisco, was taken, that he knew the John W. McCarthy, then in court, to be the John W. McCarthy who was in February, 1885, clerk of the supreme court of the State of California, and who is charged in the indictment with embezzlement of public funds. Evidence of the statutes of California as to the constitution and jurisdiction of the superior court of California, the functions of the grand jury, the nature of an indictment found by it, the nature of the crime of embezzlement, &c., was also given.

The chief-justice rendered his decision (which is on file) on the 4th of February, and thereupon certified to His Majesty's minister of foreign affairs, that—

"The chief-justice now finds that the above-named John W. McCarthy is charged with the crime of embezzlement committed by him as a public officer of the State of California and entrusted with the custody of public funds belonging to said State while such officer;

"That said crime constitutes a felony by the laws of said State of California and is a crime within the meaning of section 4190 of the Civil Code of the Hawaiian Islands;

"That the evidence adduced on the hearing aforesaid is sufficient to sustain the charge made against the said John W. McCarthy, and that the said John W. McCarthy is a fugitive from justice."

On receipt of this certificate the minister of foreign affairs issued his warrant for the arrest and surrender of the accused.

The accused having been arrested, he applied to Mr. Justice Preston, in chambers, on the 5th inst., for a writ of habeas corpus, which was granted, and on the same day the accused was produced before such justice and his detention justified under the minister's warrant. At the request of the parties the judge discharged the writ *pro forma* in order that an immediate appeal might be taken, and the accused was remanded in custody.

The appeal came on for hearing on the 6th inst., and was argued by Mr. Whiting for the appellant and the attorney-general contra.

The following points were taken by counsel for the appellant:

"1. That the State of California is not a sovereign power and therefore this Government can not recognize its demand for petitioner's extradition.

2. Our treaty and intercourse is all with the United States and no person can or should be delivered up to the officers of any of its component parts, unless the demand therefor be made by the Government of the United States at Washington.

3. The papers upon which the demand is made are in themselves insufficient to warrant a delivery upon a demand from Washington, and *a fortiori* from California, in this, that the paper purporting to be a bench-warrant is not issued under the seal of the superior court of the city and county of San Francisco and is therefore void there and everywhere.

4. That the crime of embezzlement is not one mentioned in the treaty, and even if the demand were made by the Government of the United States, this Government should not give up petitioner, because the maxim *enumeratio unius est exclusio alterius* applies to a treaty.

5. That there is no evidence to warrant his arrest and delivery under our law.

6. That there is no evidence that he is a fugitive from justice and therefore he should not be delivered up, as only fugitives from justice can be so delivered.

7. That this Government can only deliver up petitioner to the properly authorized agent of the United States of America, and Joseph Bee, who is named in the warrant, has no authority whatever from that Government.

8. The court on habeas corpus enquire into the exercise of executive discretion when the right of personal liberty is involved.

9. This Government is not observing a due respect to the United States when it treats one of the States in all respects as though it were a sovereign power.

10. From the warrant of arrest and the affidavit of the attorney-general it appears that the crime alleged to have been committed by John W. McCarthy, for which he is sought to be extradited, is that of "embezzlement." That embezzlement, committed in a foreign country, viz, the United States, is not an offence or crime for which John W. McCarthy can be extradited.

11. That the demand for extradition is made through the governor of the State of California. That there is no authority in law for said governor to make this demand."

The case was elaborately presented by the learned counsel and the following authorities *inter alia* were cited in support of his contentions: Bishop's Cr. L., sec. 23, 196, 25; U. S. *vs.* Lancaster, 2 McLean, 431; Cohen *vs.* Virginia, 6 Wheat., 264; Spear on Extradition, pp. 5, 116, 117, 195, 196, 383, 51; Opinions of Atty. Genl., vol. 7, p. 6, vol. 6, pp. 91, 85, 431; Holmes *vs.* Jennison, 14 Peters, 540; The People ex rel. Barlow *vs.* Curtis, 50 N. Y., 321; Respublica *vs.* Longchamps, 1 Dall., 120; Re Wong Sow, 3 Haw., 503. A treaty is a supreme law of the land. Foster *vs.* Nelson, 2 Pet., 253; Wheat. Int. Law, 93, 94; Short's Case, 10 S. and R., 134; In re Washburne, 4 John Ch. R., 106; Remarks of Taney, C. J., Rhode Island *vs.* Massachusetts, 14 Peters, 458.

The attorney-general contended that the Hawaiian Government might under the authority of section 449 of the Civil Code and by international

law, although not bound to do so, surrender the accused, notwithstanding "embezzlement" was not a crime included in the treaty with the United States.

By the Court: The first point we have to consider is, whether the minister of foreign affairs has authority by law to issue his warrant to surrender the petitioner.

It is a disputed question among writers on international law as to how far a sovereign state is *obliged* to deliver up persons charged with the commission of crimes in a foreign country. But it is nowhere held that the government of a sovereign state may not in its discretion deliver up such fugitives from justice on requisition made by a friendly government.

If there be a treaty, of course the contracting states are bound to deliver up persons accused of the commission of crimes mentioned in the treaty, but it does not, in our opinion, follow that states are precluded from surrendering persons accused of other crimes than those specified.

The treaty between this Government and the United States was ratified in August, 1850, and by it the contracting powers mutually agreed to surrender upon official requisition to the authorities of each, "all persons who, being charged with the crimes of murder, piracy, arson, robbery, forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall be found within the territories of the other."

In the case of Anson Wing, the opinion of the Attorney-General (Cushing) was cited by counsel for petitioner. The Attorney-General says: "It is the settled politic doctrine of the United States that, independently of special compact, no state is bound to deliver up fugitives from justice of another state." "It is true, any state may, in its discretion, do this as a matter of international comity toward the foreign state, but all such discretion is of inconvenient exercise in a constitutional republic, organized as is the Federal Union," etc. And similar opinions have been given by other Attorney-Generals of the United States, and there is no doubt that the practice of the Government of the United States and of Great Britain has in general been in accordance with the policy stated by Mr. Cushing.

But in the case of Arguelles, the Government of the United States did seize and surrender to the Spanish Government, with which there was no extradition treaty, the person accused of crime. It is true Mr. Spear, p. 16, says it was nothing but legal kidnapping, but the Government exercised its discretion.

But the case under consideration stands, as we think, on higher grounds than any previously mentioned.

The legislature of this kingdom, by one of its first laws after the recognition of its independence and sovereign rights, adopted the principle that it is the duty of the state to surrender fugitives from justice. By Article IV, section 1, of the second act of Kamehameha the 3rd, "An act to arrange the executive departments of the Hawaiian Islands," it is enacted:

"The governors, upon receiving information from the minister of the interior that any person, an alien, fleeing from the justice of a foreign country on account of crime committed therein, is lurking in their respective islands, evading justice, and that formal demand has been made for his surrender by the representatives of such foreign country, or in case no demand has been made, that a public proclamation has been issued against such

fugitive and a reward offered for his apprehension and surrender, shall have power, and it shall be their duty to issue a warrant for his or her apprehension."

By a subsequent part of the same act relating to the office of the minister of foreign relations, it is enacted:

"The minister of foreign relations, upon information in writing from the minister of the interior that an alien fugitive from justice has been arrested within the jurisdiction of this kingdom, and is in custody of the marshal pursuant to section third, article 4, chapter fourth of the first part of this act, shall give immediate notice of such arrest to the accredited representative of the nation to which said fugitive belonged, if there be one near this Government; and he shall, through such representative, tender such fugitive to the nation whose subject or citizen he is, claiming at the same time the costs and expenses incurred by his apprehension, removal, confinement, and surrender."

The statute also provides that in case the accredited representative shall decline to accept the surrender, the fugitive may be expelled the kingdom, the policy of the Government being to deny the right of asylum to criminals.

The civil code was compiled and became law in 1859, and by it the following clauses were substituted for those before set out:

"§ 449. The respective judges and magistrates of the kingdom shall have authority, upon complaint made under oath, to issue a warrant for the apprehension of any person charged with the commission of a crime in any foreign country, that he may be brought before such judges, or other magistrates respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the minister of foreign affairs, that he may issue a warrant for the surrender of such fugitive."

"§ 451. The warrant of the minister of foreign affairs, directing the surrender of any fugitive from justice, shall be binding upon all officers of His Majesty's Government, in anywise having the custody of such fugitive.

"§ 452. Every fugitive from justice may be retained in prison after his surrender until a suitable opportunity occurs for his removal at the expense of the officer to whom he is surrendered."

So that it appears to the court there can be no question as to the right of His Majesty's Government to surrender a fugitive criminal.

And, indeed, a very distinguished living statesman (P. S. Mancini) maintains that "the duty of surrendering such fugitives is founded in natural right as a debt due to justice, and consequently does not depend for its existence either on the fact of a treaty or on the condition of reciprocity." (See American Law Review, November-December, 1885, p. 955.)

The legislature having, according to our view, provided for the surrender of such fugitives, and His Majesty's Government having exercised its discretion by the minister of foreign affairs issuing his warrant for the surrender of the petitioner, it is not within our province to review the exercise of such discretion, except so far that we must see there is a proper legal basis to sanction the act of the minister; and this brings us to the

consideration of the remainder of the points urged on behalf of the petitioner.

The requisition is made by the governor of the State of California, and it is contended he has no power to make such a requisition by the laws and Constitution of the United States.

However this may be, and without binding the court to decide as we now do in any case which may hereafter come before it, we hold in the case now before us that, the minister resident of the United States having requested the intervention of His Majesty's Government, the ground taken for the petitioner is not sustainable.

With respect to the points touching the want of evidence to warrant the arrest of the petitioner, we are of opinion that if the petitioner was charged with the crime before a magistrate having power only to commit the accused for trial, and to issue his warrant for the arrest of the accused for examination, the evidence would undoubtedly be insufficient to make even a *prima facie* case, and the petitioner would be entitled to his discharge. But here an indictment has been found by a grand jury, from which we must assume that sufficient evidence was adduced to warrant the placing of the petitioner upon his trial.

Article 7 of our constitution, as to the right of an accused to have witnesses against him produced face to face, only applies to persons put upon their trial upon indictment before the courts of this kingdom.

It is enough that a reasonable presumption of guilt is apparent, and the production of an indictment found charging the crime is sufficient. (Spear, p. 291.)

With regard to the sufficiency of the bench warrant, we think it would have been more regular to have forwarded the original; but the copy is certified by the proper authority, and it purports to be issued under the seal of the court, and we think that the objections are not well taken.

The only remaining point is whether the petitioner is a fugitive from justice. The petitioner claims that by the law of the State of California (Political Code, § 853) he is entitled to be absent from the State for sixty days, and that consequently he is to be treated, not as a fugitive from justice, but as a person lawfully traveling wherever he may please.

We can not adopt this view, and we think the authorities of the State of California have repudiated such a construction by taking the measures they have. The affidavit of the officer entrusted with the warrant for the arrest of the petitioner is distinct and specific. He says "sought for him at his last known place of residence and at his place of business and in the market place and at the exchange and that he could not find said J. W. McCarthy, and deponent deposes and avers, upon his information and belief, that the said J. W. McCarthy has fled from justice in the State of California and taken refuge in the Kingdom of Hawaii." We therefore are of opinion it is sufficiently proven that the petitioner is a fugitive from justice.

We therefore dismiss the petition and remand the petitioner to the custody of the marshal. Costs to be paid by the petitioner.

JUDD, *C. J.*—In addition to the opinion of the court I wish to say that as the crime charged against the prisoner (embezzlement of public funds in a foreign country) is not one of the crimes for which, by the treaty between the United States and this kingdom, his extradition could be de-

manded, the procedure to obtain his surrender is not to be governed by the provisions of the treaty. It is quite true that if the surrender of a fugitive should be demanded as of right under the treaty, this Government would be justified in refusing to comply with it, unless the demand came from the executive representing the sovereignty of the foreign state.

In the case before us the request of the United States minister that the prisoner be surrendered to the agent of the State of California is sufficient. The liberty of residents in this kingdom is fully protected by the statute law, which requires a judicial examination into the proof of criminality against them and a judgment as to its sufficiency as a prerequisite to their being extruded from this kingdom. If it were not for this statute, and a resident of this kingdom was attempted to be sent abroad to be tried for a crime not extraditable under a treaty, the act of the executive in arresting him and holding him for surrender would be without law. In such a case the courts would be authorized to interfere by habeas corpus.

The policy of this country, as evidenced by the statute of 1846, which authorized the arrest of an alien fugitive from justice and his tender to the accredited representative of the country to which the fugitive belongs, though no demand for his surrender be made, and the present statute passed in 1859, is certainly against making our shores the asylum for foreign criminals. Many of the dicta quoted from cases in courts of the United States where the policy is said to be against the surrender of fugitives, except under treaty obligations, would have no application here.

McCULLY, *J.*—The eleven points made by the learned counsel for the petitioner cover everything that can be urged on his behalf. But in my view he seriously misapprehends the status of the case with reference to Article XIV of the American treaty, and with reference to treaty stipulations generally.

It is seen by the citations made in the opinion of the court from the organic laws of 1846, the first systematic laws of this kingdom, that a full and liberal provision was made against the contingency that the island kingdom might become a resort for fugitives from justice. Such might be arrested upon merely the formal demand of a resident foreign representative, or further upon the mere knowledge that public proclamation had been issued against a fugitive, and be held in custody of the authorities until surrendered to the representative of the foreign government from whose jurisdiction he had fled. These statutes contain no provisions for judicial examination of the grounds for issuing a warrant. The order proceeds immediately from the executive. Furthermore, so careful was the legislation of that time that persons guilty of crime in other countries should not sojourn here that it is provided that even if the representative of the foreign power refuses to accept the surrender, the offender may be delivered up for transportation to any armed vessel of his nation.

These provisions of law were made prior to any treaty stipulations concerning extradition, although treaties recognizing the sovereignty and civilization of the kingdom had been made with France and Great Britain.

The statutes of 1846 being the law of the kingdom, the treaty with the United States embracing Article XIV, providing for extradition, was ratified in August, 1850. There are obvious reasons why the treaty should be narrower in its terms than the Hawaiian statute. It was of reciprocal ob-

ligation, binding the United States to restore like offenders upon like terms to the Hawaiian Government.

It is a universal rule in extradition treaties to specify the extraditable offenses. What is agreed upon becomes obligatory and the claim is of right, not depending upon international comity nor upon the statutes of the state upon which the demand is made. The United States could have entered into no treaty giving extradition in the broad terms of the Hawaiian statute of 1846, while there were very good reasons of policy for this kingdom to offer the statute to the powers of the world, and there could be no implication that the American treaty curtailed the effect of it by specifying the offenses for which the United States would extradite to Hawaii, and vice versa.

In this state of law and treaty the civil code, repealing and superseding the acts of 1846, was passed May, 1859. Section 449 specifies no offenses. "A crime" is the only designation of the subject on which the statute moves. The mode of proceeding only is changed. There is no appearance of modification due to the American treaty which had been in operation nearly ten years. The wise policy of maintaining a statute which would surrender to the justice of foreign powers a wider class of offenders than was stipulated by treaty appears to have still obtained. Enacted after the treaty it is independent of it, and I see no reason to hold that the treaty abridges the law. This view disposes of one series of the petitioner's objections.

As to the form of the demand. Undoubtedly the State of California can not maintain diplomatic relations, with this or any other foreign power, unless, which I am not informed about, she is included among the states which the Republic of Mexico by treaty with the United States permits to make extradition demands directly upon her. But here the United States minister adopts and presents this request, which is not a demand—only treaty stipulations being demandable—that this Government will put in operation its own statute. In this view it seems to me nothing more is needed. Indeed the statute requires only "complaint made under oath" before any magistrate by whomsoever may be credible and have a proper relation to the case to put it in motion. Query: Why could not Officer Bee, without the request of the governor of California, and without the request of the United States minister, have demanded a warrant for the apprehension? These requests, the one and the other, are highly influential, but I do not perceive that they are essential to the operation of the statute. The authority of Officer Bee to receive him without special authorization is, however, a different thing from making the complaint.

Now, was the evidence of criminality sufficient to sustain the charge? Doubtless, this court upon review in *habeas corpus* of the sufficiency of evidence, will be held by all the constitutional provisions guaranteeing the rights of personal liberty and of trial upon evidence of witnesses produced face to face, both for the defense and prosecution, which rights belong to all persons being for any time within our jurisdiction.

Without referring to the authorities given in the opinion of the court, I cite only the result expressed in Spear's Law of Extradition, p. 10, in these words: "The general rule of evidence adopted in the extradition treaties of the United States is, that the charge of criminality on which the demand

for delivery is based must be supported by such evidence as would justify the apprehension and commitment for trial of the person accused, if the alleged offense had been committed in the country on which the demand is made." This rule as to treaties may be adopted for action under our statute. We have before us in this case evidence of criminal proceedings commenced in the court of California. An indictment has been found by at least twelve grand jurors acting upon sworn testimony. A bench-warrant has issued thereon for his arrest, and the service thereof has been defeated only by the departure of the petitioner from the country. The case has reached the stage of probable cause and apprehension already in California. "Evidence of criminality" required by section 449 cannot be taken to mean conviction of guilt. Mr. McCarthy is not to be tried here. He is wanted to be tried in California. The proofs offered here satisfy me that there is no infringement of personal right in rendering him for such trial. On the other hand it would be unreasonable to require more. There is a clear distinction between a mere charge or accusation and a commitment or indictment found. If there were only the first, it would be proper to require here evidence of probable cause on which a commitment for trial might be made. We are certified that this has already been done. If our statute does not apply to this case it is not easy to see what it was intended to accomplish.

Regarding the jurisdiction of the court to inquire into the discretion of the executive in this proceeding it seems to me that when we have determined that the issue of the certificate to the minister of foreign affairs was well based on the statute, we have done all that belongs to us. Upon such certificate given we are not to advise him to issue his warrant, and certainly are not to advise him not to issue it.

ITALY.

December 31, 1888, Mr. Stallo made the following report:

SIR: I have the honor to acknowledge the receipt of your circular-letter of the 26th of November, 1888, and in answer to the questions therein propounded to me, to report:

1st. That the Italian Government does not, as a general rule, extradite fugitives from justice in the absence of a conventional obligation, although the old Piedmontese Government has occasionally extradited foreigners who had taken refuge within its territory as a matter of comity. The Italian Government does not surrender its own citizens, and in a late case (that of Salvatore Paladini) has refused to surrender an Italian subject, even although in the extradition treaty of March 23, 1868, between Italy and the United States, there is no article expressly excepting the citizens or subjects of either of the contracting states from the operation of the treaty.

2nd. Before the formal requisition for the surrender of a fugitive from justice, accompanied with the evidences of crime relied upon to obtain extradition, has been received, a provisional arrest and detention of the fugitive may be granted either upon a written or telegraphic communication by the demanding government; but to that end a diplomatic requisition is

necessary, which must contain a statement of the facts constituting a case of urgency. The term during which the fugitive can be provisionally detained is not limited by law.

3rd. Warrants of arrest are issued by the executive, that is, in fact, by the department of grace and justice, to which all requisitions are sent by the foreign office. If a warrant for provisional arrest has been issued a new warrant is required after the receipt of the formal requisition. The warrant of arrest is issued upon the strength of the documents evidencing the guilt of the accused which accompany the requisition, and no complaint before the judicial authorities is required. No arrest can be secured on complaint before judicial authorities without prior application to the executive.

4th. The charge against the fugitive, so far as it is evidenced by the documents accompanying the requisition, is, in the first instance, examined by the department of grace and justice, and thereupon, upon the application of the fugitive or at the instance of the Government may be referred to the judicial tribunal of the province in which the arrest has been made. But the action of such tribunal is simply advisory and not binding on the executive. All papers to be presented to the judicial authorities are first submitted to the executive, *i. e.*, to the department of grace and justice, by the foreign office.

5th. Papers upon which the demand for extradition is founded are required to be authenticated by the department of state of the demanding government.

6th. The question of extradition is finally decided by the foreign office upon the advice of the department of grace and justice, and notice of the decision is given to the demanding government through the same channels through which the requisition was transmitted.

7th. Seizure of the property and effects of the fugitive may be secured in an action at law upon the complaint of the demanding government or of the party injured, but such property and effects are not, as a rule, delivered to the demanding government.

8th. The delivery of an extradited fugitive takes place at the frontier with the understanding that the fugitive be taken out of the country as soon as practicable.

9th. The right of transit across the territory of Italy of criminals surrendered by a third state to a foreign government may be conceded by the Italian Government as a matter of comity; but owing to the peculiar geographical position of the Kingdom of Italy no such concession appears as yet to have been applied for.

10th. The expenses of extradition are to be paid by the demanding government.

In compliance with the instructions of the Department, I send herewith, under separate cover, a duplicate copy of the new penal code of Italy, which is to take effect on the 30th of June, 1889; and also inclose a translation of articles 4 to 8, Book First, Title I, relating to extradition. I have not as yet been able to procure a collection of the treaties relating to extradition between Italy and foreign powers, but will forward the same as soon as it is obtained.

I have the honor, etc.,

J. B. STALLO.

[Inclosure.—Translation.]

Extract from the new penal code approved by the Chamber of Deputies and the Royal Senate of the Kingdom of Italy, promulgated on the 28th of November, and to take effect on the 30th of June, 1889.

BOOK FIRST.—TITLE I.

ART. 4. No one can be punished for crimes committed without the territory of the kingdom except in cases expressly provided for by law.

ART. 5. A citizen or foreigner who, in a foreign territory, commits a crime against the security of the state, or is guilty of counterfeiting the seal of the state or of coin having legal currency within the kingdom, or of evidences of public debt or credit, such crime being punishable by imprisonment for a term exceeding five years, is tried and punished according to law.

He may be tried and punished according to Italian law even although he has already been tried and punished in the country where the crime was committed, but in such case allowance is made for the punishment already incurred.

ART. 6. A citizen who, in cases other than those indicated in the preceding article, commits a crime in a foreign country which, according to the laws of that country, is punishable by imprisonment for a term of not less than three years, is tried whenever found within the kingdom and punished according to the provisions of the more lenient of the laws of the two countries.

If the crime be punishable with imprisonment of less duration, the person committing the crime can not be proceeded against except on complaint of the party injured or on the request of the foreign government.

* * * * * * *

ART. 7. A foreigner who, in cases other than those indicated in article 5, commits a crime in a foreign country to the injury of an Italian citizen or of the state, which crime, according to the laws of the state where it was committed, is punishable with imprisonment for a term of not less than three years, is tried whenever found within the kingdom, and punished according to the milder law of the two states; and in case the crime is punishable with imprisonment of less duration, the person guilty of it is proceeded against only upon the complaint of the party injured.

A foreigner found within the kingdom may be tried and punished according to the milder law prevailing in either of the countries, for a crime committed abroad to the injury of a foreigner, even if such crime, according to the laws of the state where it was committed, is punishable with imprisonment for not less than three years upon concurrence of the following conditions:

1st. That the crime is one of those covered by the treaty of extradition, or an offense against the law of nations, against a person, against property, against public faith, against good morals or the peace of families, or in the nature of a fraudulent bankruptcy;

2nd. That no extradition has taken place of the party guilty of the crime to the government of the country in which the crime was committed, or to that whereof he is a citizen.

The Government may expel the foreigner from the kingdom, in the cases provided by law, without trial or after trial and punishment.

ART. 8. Excepting in the cases provided for by the second paragraph of art. 6 persons charged with crime are not tried:

1st. If according to the law either of Italy or of the country where the crime was committed, the penal action is barred by the statute of limitations;

2nd. If the crime according to the first paragraph of art. 9, is not such as to justify extradition;

3rd. If the person charged with the crime has been tried and acquitted in the foreign country; or, having been tried and found guilty, has suffered the punishment inflicted upon him; or if the sentence pronounced against him is barred by the statute of limitations.

* * * * * * *

ART. 9. The extradition of an Italian citizen to a foreign government is forbidden.

The extradition of a foreigner is never allowed for political or similar crimes.

The extradition of a foreigner can not be offered or conceded except by order of the King's government, and after previous judgment of the judicial authority of whose jurisdiction the foreigner is subject.

Nevertheless, whenever a demand of extradition is made, the competent authority may order the provisional arrest of a foreigner.

JAPAN.

January 19, 1889, Mr. Hubbard made the following report:

SIR: I have the honor to acknowledge the receipt of your circular instruction, dated November 26, 1888, asking for certain information on the subject of international extradition as practiced by the Government to which I am accredited.

I had the honor in my dispatch No. 370, dated August 29, 1887, to enclose to the Department the law of Japan on the subject of extradition, and this law, with the treaty of extradition between the United States and Japan, answers all the questions propounded in the circular instruction, except one or two, which have been answered for me by the Japanese foreign office.

Japan has no treaty of extradition with any country except the United States, and no law on the subject of extradition has been passed since the law referred to above as having been sent to the Department of State, and which I have the honor again to enclose for the convenience of the Department.

The Japanese Government will extradite in the absence of a conventional obligation, on condition of reciprocity, and the matter is in the absolute discretion of the Government.

In regard to the question in section 4 of the circular instruction, I beg to refer the Department to sections 15 and 16 of the inclosed law, with the

explanation that while the public procurator makes a report to the minister of justice in every case of extradition, the report is not binding on the minister of justice who finally decides the extradition.

The Government will deliver up extradited criminals at the frontier, that is, on board ship.

When the right of transit across the territory of Japan is granted for criminals surrendered by a third state to a foreign government, the criminal during such transit is in the custody of Japanese officers.

I have, etc.,

RICHARD B. HUBBARD.

[Inclosure.—Translation.]

Extradition of criminals regulations.

We hereby give our sanction to the regulations for the extradition of fugitive criminals, and order the same to be promulgated.

[His Imperial Majesty's Sign Manual.]

[Privy Seal.]

Dated the 3rd day of the 8th month of the 20th year of Meiji.

(Countersigned) Count ITO HIROBUMI,
President of the Cabinet.
Count INOUYE KAORU,
Minister for Foreign Affairs.
Count YAMADA AKIYOSHI,
Minister of Justice.

Imperial ordinance No. 42.

REGULATIONS FOR THE EXTRADITION OF FUGITIVE CRIMINALS.

ART. I. In these regulations the term "treaty power" means a foreign power with which the Empire of Japan has or may hereafter have an extradition treaty.

The term "extradition crime" means one of the crimes or offences mentioned in an extradition treaty with a treaty power. The term "fugitive criminal" means any person not a Japanese subject who is accused or convicted of an extradition crime committed within the jurisdiction of any treaty power, who has taken or is suspected of having taken or being about to take refuge within the jurisdiction of the Empire of Japan.

It shall also include Japanese subjects:

1. If the extradition treaty between the Empire and the demanding-treaty power provides for the mutual surrender of their respective subjects or citizens.

2. If the extradition treaty makes the surrender of subjects or citizens discretionary, and the demanding-treaty power shall have signified its readiness to reciprocally surrender its subjects or citizens under similar circumstances.

ART. II. Whenever the extradition of a fugitive criminal is requested by a treaty power, and steps are to be taken with a view to his surrender, the provisions of the regulations shall be complied with.

ART. III. A fugitive criminal shall not be surrendered in the following cases:

1. If the offence in respect of which his surrender is requested is of a political character.

2. If he satisfactorily prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

ART. IV. A fugitive criminal who has been accused of some offence within Japanese jurisdiction, not being the offence for which his surrender is requested, or who is undergoing sentence in Japan, shall not be surrendered until after he has obtained his discharge by expiration of his sentence or otherwise.

ART. V. A fugitive criminal shall be liable to be apprehended and surrendered to a treaty power for an extradition crime committed before the conclusion of the treaty with such power.

ART. VI. A fugitive criminal shall also be liable to be apprehended and surrendered for an extradition crime although the Japanese courts may have concurrent jurisdiction over such crime, if, in the opinion of the minister of justice, the ends of justice will be subserved by such surrender.

ART. VII. All warrants of arrest issued under these regulations shall be enforceable in all parts of the Empire.

ART. VIII. If a fugitive criminal is claimed by two or more treaty powers, on account of crimes committed within their jurisdiction, the surrender shall be made according to priority of demand, unless an agreement to the contrary be made between the treaty powers making the requisition.

ART. IX. The minister of justice may, upon the request of the minister for foreign affairs, order one or more head public procurators (*jôseki kenji*) to issue a warrant for the provisional arrest of a fugitive criminal according to Form I to these regulations annexed.

Such request should only be made by the minister for foreign affairs after he has received information in writing or by telegraph from a treaty power through the proper channel that a warrant has been issued for the arrest of the criminal, and an assurance that his surrender will be requested in due form.

ART. X. When any person has been apprehended under a warrant of provisional arrest he shall be discharged from custody unless a requisition for surrender shall be made within a reasonable time, not exceeding two months. Such discharge shall not, however, prevent the subsequent arrest and surrender of any person so apprehended.

When a requisition for surrender of a person held under a warrant of provisional arrest has been made, a warrant of arrest in accordance with Form II, annexed, shall be issued and the warrant of provisional arrest shall be returned.

ART. XI. Subject to the exception in Article IX provided for, no person shall be arrested with a view to extradition until a requisition shall have been made through the channel named in the treaty under which extradition is claimed, in manner following:

1. In the case of a person accused, the requisition shall be accompanied:

(*a*) By an authenticated copy of the warrant of arrest purporting to

have been issued by a duly authorized official of the country in which the acts charged against the accused are alleged to have been committed; and

(*b*) By authenticated copies of the depositions or statements on which such warrant of arrest was issued.

2. In the case of a person convicted, the requisition shall be accompanied by a copy of the sentence of the court in which he was convicted, authenticated under its seal.

ART. XII. Upon receipt of a requisition for surrender, the minister for foreign affairs shall, if the case is one falling under an extradition treaty, transmit the requisition, with its accompanying documents, to the minister of justice.

The minister of justice shall, upon their receipt, and if he considers there be due cause, order the head public procurator of any place where the fugitive criminal is believed to be, or is expected to come, to issue a warrant for his arrest.

ART. XIII. A head public procurator, upon receipt of the order from the minister of justice, in Article XII mentioned, shall issue a warrant of arrest. Such warrant shall be according to Form II to these regulations annexed.

ART. XIV. When the person claimed shall have been apprehended, whether provisionally or otherwise, he shall be brought before the head public procurator who issued the warrant, or the head public procurator within whose district he has been apprehended.

Such procurator shall immediately inform the minister of justice of such arrest.

The minister of justice shall cause to be forwarded to him so soon as may be practicable, unless the discharge of the person arrested shall have been ordered, a copy of the requisition for surrender and the documents accompanying the original requisition.

ART. XV. In the case of a person accused, the head public procurator before whom he is brought shall take evidence with respect to the identity of the accused and the genuineness and authenticity of the documents accompanying the requisition for surrender; and he may, if he deems such documents insufficient, take additional evidence as to the criminality of the accused. In case of a person convicted, the head public procurator shall limit himself to obtaining evidence of identity and proof of sentence having been passed by a competent court of the treaty power claiming his extradition.

ART. XVI. When the head public procurator has completed his enquiry he shall forward a copy of the same to the minister of justice together with his opinion as to the course that should be pursued. He shall also at the same time return the copy of the requisition for surrender and the documents accompanying it. The minister of justice shall, upon receipt of such report from the head public procurator, either issue a warrant of surrender, according to Form III to these regulations annexed, or order that the person arrested be discharged.

ART. XVII. No fugitive criminal shall be detained for more than two months after he shall have been arrested in accordance with a warrant of arrest.

ART. XVIII. The minister of justice shall issue a warrant of surrender only in the following cases:

1. In the case of a person accused of an extradition crime, provided the evidence of criminality appears to him sufficient, according to the law of Japan, to justify his committal for trial if the crime or offence of which he is accused had been committed in Japan.

2. In the case of a person convicted, if he is satisfied that the person has been convicted by a competent court.

ART. XIX. Persons convicted by judgment in default (*in contumaciam*) shall, for the purpose of these regulations, and unless it be otherwise stipulated by the treaty with the treaty power demanding the extradition, be considered as persons accused, and not as persons convicted.

ART. XX. When any person arrested has been discharged, or when a warrant for his surrender has been issued, the minister of justice shall return to the minister for foreign affairs the requisition for surrender and its accompanying documents along with a short statement of the course taken and the reasons therefor.

ART. XXI. No person shall be detained after the issue of a warrant of surrender for more than one month. If he be not conveyed out of the Japanese Empire within that time, he shall be discharged from custody, unless good cause be shown to the contrary.

ART. XXII. All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, unless for good reason to the contrary, be given up to the person or persons who receive him when the extradition takes place.

ART. XXIII. The minister of justice may, upon request of the minister for foreign affairs, authorize the passage through the territory or the territorial waters of Japan of any person who has been surrendered by one foreign power to another.

Such request should only be made by the minister for foreign affairs, after receiving an application through the proper channel from the government to which the surrendered person is being conveyed, accompanied by a duly authenticated copy of the warrant of surrender, and in the absence of treaty stipulations on the subject between the Empire of Japan and the government making the application, an assurance that, under similar circumstances, said government would reciprocally authorize the conveyance through its territory or territorial waters of persons surrendered by third powers to the Empire of Japan.

FORM I.

WARRANT OF PROVISIONAL ARREST.

Name, Age, Nationality and residence of the person to be arrested.

By order of the Minister of Justice, this warrant is issued pursuant to the Extradition Regulations, and the above mentioned —— a fugitive criminal of —— who has been {accused of / convicted of} the commission of —— in —— is hereby ordered to be arrested to be further dealt with according to law.

Seal of Public Procurator's Office.	Seal and Signature of the Head Public Procurator. Seal and Signature of the Court Clerk. The —— day of the —— month of the —— year of Meiji.

Signature of the person arrested; if unable to obtain it, the reason to be stated.	
Date and hour of the execution of the warrant.	
Place of the execution of the warrant.	
Manner of the execution of the warrant.	
If a house is searched, the fact to be stated.	

EXECUTED AS ABOVE STATED.

Seal and Signature of the Policeman or Gendarme.
The —— day of the —— month of the —— year of Meiji.

FORM II.

WARRANT OF ARREST.

Name, Age, Nationality and residence of the person to be arrested.

By order of the Minister of Justice, this warrant is issued pursuant to the Extradition Regulations and the above mentioned —— a fugitive criminal of —— who has been { accused of / convicted of } the commission of —— in —— is hereby ordered to be arrested to be further dealt with according to law.

Seal of Public Procurator's Office.	Seal and Signature of the Head Public Procurator. Seal and Signature of the Court Clerk. The —— day of the —— month of the —— year of Meiji.

Signature of the person arrested; if unable to obtain it the reason to be stated.	
Date and hour of the execution of the warrant.	
Place of the execution of the warrant.	
Manner of the execution of the warrant.	
If a house is searched, the fact to be stated.	

EXECUTED AS ABOVE STATED.

Seal and Signature of the Policeman and Gendarme.
The —— day of the —— month of the —— year of Meiji.

FORM III.

WARRANT OF SURRENDER.

Name, Age, Nationality and residence of the person to be surrendered.

The warrant is issued pursuant to the Extradition Regulations and the above mentioned ——— who was arrested on the ——— day of the ——— month of the ——— year of Meiji as a fugitive criminal {accused / convicted} of the commission of ——— in ——— under a warrant of {arrest / provisional arrest} dated the ——— day of the ——— month of the ——— year of Meiji is hereby ordered to be surrendered to ——— the person or persons duly appointed to receive him; and the said ——— (is / are) hereby commanded to receive the said ——— into (his / their) custody and to convey him within the jurisdiction of the ——— and there place him in the custody of any person or persons duly authorized to receive him.

Seal of Department of Justice.	Seal and Signature of the Minister of Justice. The ——— day of the ——— month of the ——— year of Meiji.

Date and hour of the execution of the warrant.	
Place where executed.	
Signature of the person or persons to whom the person surrendered has been delivered.	

EXECUTED AS ABOVE STATED.

Seal and Signature of the Superintendent of the prison where the person to be surrendered has been detained.

The —— day of the —— month of the —— year of Meiji.

LIBERIA.

January 2, 1889, Mr. Smith inclosed to the Department, from the secretary of state of Liberia, the following note:

DEPARTMENT OF STATE,
Monrovia, January 1, 1889. (Liberia, W. C. A.)

SIR: I have the honor to acknowledge the reception from your legation of a despatch addressed to you by the Honorable the Secretary of State of the United States, with reference to certain information to be obtained on the subject of international extradition as practiced by the Government of the Republic of Liberia.

2. In reply to the inquiries suggested in the document now under reply, I have most respectfully to inform you that this Government *has not*, up to the present, entered into treaty relations with any foreign states with reference to the extradition of fugitives, and does not extradite in the consequent absence of a conventional obligation to that effect.

3. As a natural consequence of the absence of treaty obligations on the subject of extradition, there has so far been no legislation on the subject, and I am therefore unable to give the information sought for in the remaining paragraph of the above cited document.

I have the honor to be, &c.,

E. J. BARCLAY.

MEXICO.

The following cases bearing on procedure in Mexico are taken from the records of the Department of State:

May 19, 1883, Mr. Morgan, minister of the United States at the City of Mexico, was instructed by telegraph to ask for the arrest of one Vincent, charged with embezzlement of public moneys in the United States. Mr. Morgan preferred the request. In reply the Mexican minister of foreign affairs said that it would be useless to telegraph an order for Vincent's arrest, since no description of him was furnished nor any information of his whereabouts. He also adverted to the fact that the treaty did not authorize the arrest of a fugitive upon telegraphic request prior to the receipt of a formal requisition. Subsequently a description of Vincent was furnished and on the 2nd of July, 1883, Mr. Morgan telegraphed to the Department that on the preceding day the President of Mexico had instructed the governor of Coahuila, where Vincent was supposed to be, to arrest him and to detain him until the extradition papers were presented. On the 5th of April, 1884, Mr. Morgan reported that the President of Mexico had ordered Vincent's surrender.

On the 2nd of July, 1884, Mr. Morgan reported to the Department that, pursuant to its telegraphic instructions, he had requested the foreign office to direct the authorities at Monterey, Nueva Leon, to hold one Morrison, charged with forgery at San Antonio, Texas, until the arrival of an application for his extradition, which was then on its way. The minister for

foreign affairs replied: "Having yesterday received a cablegram from Señor Romero [Mexican minister at Washington] containing a similar application from the Secretary of State at Washington, I immediately telegraphed the governor of Nueva Leon to order Morrison's detention."

On July 12, 1884, Mr. Morgan enclosed a note from Mr. Fernandez, of July 9, saying that the governor of Nueva Leon had ordered Morrison's detention, and he hoped the documents would soon be transmitted. On August 5, 1884, Mr. Morgan reported that an order had been issued for his extradition. Mr. Morgan stated that on July 21 he received a note from the minister for foreign affairs announcing that the governor of Nueva Leon had telegraphed that he would hold Morrison subject to the orders of the department of foreign affairs. This was before the legation had received the papers, which came on July 23.

July, 8, 1885, Mr. Jackson, minister of the United States in Mexico, reported making request in accordance with telegraphic instructions for the arrest of one Hamilton, embezzler of public moneys, supposed to be at Paso del Norte. He assured the Mexican Government that the papers, warrant, and requisition would go forward immediately. July 7, Mr. Mariscal, minister for foreign affairs, replied that he had sent the governor of Chihuahua the following telegram:

"The United States minister asks the detention of James A. Hamilton, who must be in Paso del Norte; he offers to furnish proofs which justify extradition.

"Please order immediate imprisonment of Hamilton, consulting American consul as to his identity."

Various requests of the minister of the United States, based on telegraphic instructions, are found for the provisional detention of fugitives, pending the receipt of formal proofs. When such telegraphic instructions afforded information sufficiently definite for the identification and arrest of the accused, appropriate orders have generally been issued.

The regular course of procedure to obtain the extradition of a person in Mexico under the treaty between that country and the United States is to send a formal requisition, accompanied with the requisite evidences of criminality, to the legation in Mexico for presentation to the foreign office. If the evidences be found to be in due form and sufficient, the President orders the extradition. Upon receipt of this order the local authority proceeds to arrest the fugitive and to hand him over to the agent of the United States upon proof of the fugitive's identity. If the fugitive has already been arrested and such proof has been made, he is at once handed over to such agent.

Except in case of offences committed in frontier States and Territories, as to which special provision is made in the treaty between the United States and Mexico, the surrender of a fugitive in the latter country can take place only upon the order of the President of the Republic.

Where certain fugitives, charged with forgery in the State of Missouri, fled to Mexico, carrying with them a large part of the proceeds of their crime, and were upon proper demand and proof, ordered to be surrendered, it was also directed, upon the request of the United States, that "the papers and other effects of the prisoners, which may serve for their conviction of the crime of forgery of which they are accused," should be delivered

to the agent of the United States who was authorized to receive the prisoners. [Mr. Bragg, U. S. Minister, to Department of State, 19 February, 1889, MSS. despatches from Mexico; case of Harrison and Samuels.]

NETHERLANDS.

January 5, 1889, Mr. Roosevelt made the following report:

SIR: In compliance with your circular of November 26, 1888, no number, in reference to the extradition of criminals, I have the honor to enclose (1) duplicate copies law of April 6, 1875; (2) duplicate copies article 2d, modifying conditions of extradition to suit penal code; (3) duplicate proposals for treaties; (4) a report from the Netherlands Government covering the questions in the circular.

The latter is so full and explicit that I think it fully covers all that the Government desires in the matter.

I am, etc.,

R. B. ROOSEVELT.

[Inclosure 1—Translation.]

Law of April 6, 1875, on extradition. (*Bulletin of Laws, No. 66.*)

ART. 1.

Articles 16, 17, and 18 of the law of August 13, 1849 (Bulletin of Laws No. 39), are repealed.

No new treaty concerning the extradition of foreigners can be concluded, nor can the existing treaties on this subject be renewed, except in conformity with the provisions of the present law.

ART. 2.

Foreigners can be extradited only for the crimes and offenses hereinafter enumerated committed outside the Kingdom:

1. Attempts against the life of the Sovereign, or of the members of his family, or of the head of a republic;

2. Murder, assassination, parricide, infanticide, poisoning;

3. Threats, punishable according to the provisions of article 305 of the penal code;

4. Abortion;

5. Intentional wounds or blows, which have occasioned a disease or incapacity for personal labor during more than twenty days, or which have been delivered with malice aforethought;

6. Rape, or any other attempt against chastity, committed with violence;

7. Offenses against public morals, punishable in accordance with the provisions of article 334 of the penal code;

8. Bigamy;

9. Kidnapping, concealment, suppression of the birth of a child, the substitution or changing of a child;

10. Kidnapping of minors;

11. The counterfeiting, falsifying, debasing, or clipping of coin, or intentional participation in the issuing of counterfeited, falsified, debased, or clipped coin;

12. Counterfeiting or falsifying the seals of state, bank-notes, the public funds, dies, stamps and marks, punishable according to the provisions of articles 139–143 of the penal code; counterfeiting or falsifying paper money and postage-stamps;

13. Forgery, punishable according to the provisions of articles 145–148 and 150 and 151 of the penal code;

14. False testimony, subornation of perjury, false swearing;

15. Bribery of public functionaries, punishable in accordance with the provisions of articles 177–179, and 181–183, of the penal code, malversation, fraudulent conversion, or embezzlement committed by public receivers or depositaries;

16. Intentional incendiarism, punishable in accordance with the provisions of articles 434 and 435 of the penal code;

17. Intentional destruction of real property, punishable in accordance with the provisions of article 437 of the penal code;

18. Larceny of personal property, punishable in accordance with the provisions of articles 440 and 442, of the penal code;

19. The illegal and intentional loss, wrecking, destruction of, or injury to ships or other vessels;

20. Mutiny and rebellion of passengers on board of a vessel against the captain, and of the crew against their superior officers;

21. The crime of intentionally endangering a train on a railroad;

22. Robbery;

23. Swindling;

24. Fraudulent use of a signature in blank;

25. Embezzlement or waste, to the injury of the owner, holder, or possessor of goods or valuables which have only been placed on deposit or for hired work;

26. Fraudulent bankruptcy.

ART. 3.

Extradition shall take place not only for the crime or offense when consummated, but also for the attempt, or the act of complicity, when either is punishable under the provisions of the penal laws of the Netherlands.

ART. 4.

Extradition shall not be granted as long as the foreigner is undergoing prosecution in the Netherlands for the crime or offence committed outside of the Kingdom, nor if he has been tried in the Kingdom for the said crime or offense, and has been condemned, discharged, or acquitted.

ART. 5.

Extradition shall not be granted when the prosecution or punishment of the crime or offence is barred by prescription under the laws of the Netherlands, before the arrest of the foreigner in the Kingdom, or, if the arrest

has not been made, before he has been summoned before the tribunal to be examined.

ART. 6.

If the foreigner is undergoing prosecution in the Netherlands for an offence other than that which has given rise to the request for extradition, this request shall not be granted until after the close of the trial, and, in case of condemnation, until after he has undergone his sentence, or been pardoned.

Nevertheless, the foreigner may be provisionally extradited, to be tried in the foreign state, on condition that he shall be returned to the Netherlands after the close of the proceeding.

ART. 7.

Extradition shall be granted only on condition that the extradited person shall not be prosecuted or punished for any crime or offense whatever, committed before his extradition, which is not specified in the treaty, unless he has had, for one month after his extradition, opportunity again to leave the country.

ART. 8.

Extradition shall be requested through the diplomatic channel.

It shall be granted only in accordance with the judgment of the court of the arrondissement, in which the person whose extradition is requested has been arrested or shall be found.

In giving judgment the court shall decide which of the articles seized may be restored to the person whose extradition is requested and which are to be surrendered as evidence for conviction.

ART. 9.

Whilst awaiting the request through the diplomatic channel the foreigner whose extradition may be requested may be provisionally arrested in virtue of an order of an officer of justice or of one of his deputies upon the request of the foreign authority designated by the treaty as competent to issue a provisional warrant of arrest.

Articles in the possession of the foreigner may be seized.

If the provisional arrest has been made in virtue of an order from a deputy officer of justice the prisoner shall be immediately brought before the officer of justice.

ART. 10.

After having heard the prisoner the officer may issue a provisional warrant of arrest in his case, which shall be notified to the prisoner within forty-eight hours.

The officer of justice shall order the immediate discharge of the prisoner, unless he is to be held on another ground, and the restitution of the articles seized, unless there is another ground for retaining them, if the request for extradition is not addressed to him, together with the necessary documents, within the period fixed by the treaty, which can not exceed—

(1) Twenty days, counting from the date of the provisional warrant of ar-

rest, if the arrest has been requested on behalf of an European government;

(2) Three months, counting from the same date, if the request has been made on behalf of a government outside of Europe.

When the request for extradition has been made within this period, proceedings shall be had in conformity with the provisions of articles 13–18.

ART. 11.

The request for extradition from the foreign government shall be accompanied by the original, or by an authenticated copy of a sentence of condemnation, or of a bill of indictment or of an order of commitment, together with the warrant of arrest, or of any other document of the same character in use in the foreign state and specified in the treaty.

ART. 12.

Foreigners whose extradition is requested in virtue of a treaty, and whose arrest has not yet been effected, shall be arrested. The warrant of arrest is to be notified to them within forty-eight hours.

The articles found in their possession may be seized.

The officer of justice of the court of the arrondissement where the arrest has taken place shall be informed of the arrest within twenty-four hours.

ART. 13.

Within three days after the arrest and, if the latter has not been made, or if it has been made before the request for extradition, within three days after having received the order for it, the officer of justice shall cause the individual whose extradition is requested to be examined by the court, and shall ask the latter to give its opinion on the admissibility of the request for extradition.

ART. 14.

The person whose extradition is requested shall be examined in open court, unless he shall request a secret session, or unless a secret session shall be ordered by the court, during the whole or part of the hearing, for grave reasons, which shall be noted on the records.

The examination shall take place in presence of the public prosecutor.

The person whose extradition is requested may be assisted by counsel. Any person possessing the qualifications necessary to defend an accused person before the criminal or correctional court shall be admitted as counsel.

ART. 15.

Within fifteen days after the examination, the court shall transmit its opinion, and the judgment spoken of in art. 8, together with the papers in the case, to our minister of justice.

ART. 16.

Every person who, having been arrested or his extradition having been demanded, lays claim to the possession of the quality of Dutch nationality,

and who alleges that the present law is consequently not applicable to him, may claim this quality by petition addressed to the high court within the fifteen days following his examination.

The officer of justice shall inform him of this right, as soon as possible after his arrest, and it shall be recalled to him at the time of his examination. He shall, moreover, be informed that he has the right to consult counsel on this point.

The clerk of the high court shall immediately inform our minister of justice of the filing of the petition.

ART. 17.

The high court shall decide after having heard the attorney-general. If the high court decides that the petitioner is a Netherlander, it shall at the same time decree his immediate discharge, if he has been arrested, unless he is to be kept under arrest for another reason.

The attorney-general of the high court shall immediately inform our minister of justice of the judgment of the court.

If the court decides that the petitioner is a Netherlander the articles seized shall be restored to him, unless they are to be retained on another ground, and the proceedings before the lower court, if they have been commenced without being concluded, shall be discontinued.

ART. 18.

If, within the period fixed by article 16, the decision of the high court has not been sought, or if it has been decided by the court that the person whose extradition is requested is not a Netherlander, the extradition shall be granted or refused by our minister of justice, after having received the opinion of the (lower) court.

If the extradition is refused, the person whose extradition is requested shall be immediately discharged, if he has been arrested, unless he is to be kept under arrest for another reason, and the articles seized shall be restored to him, unless there is another ground for retaining them.

ART. 19.

If the person whose extradition is requested has not been arrested, and if, being duly cited, he has not appeared before the (lower) court for examination, the periods specified in articles 15 and 16 shall begin to run from the day fixed by the (lower) court for the examination.

ART. 20.

The Government may authorize the transit through the territory of the Netherlands of a foreigner whose extradition has been granted by a foreign government to another government having a treaty of extradition with the Netherlands, including the offence for which extradition has been granted to the latter state, provided that the transit takes place, so far as the escort is concerned, with the co-operation of the officials of the Netherlands.

ART. 21.

The Government may order that the foreigner who is provisionally detained, or who is serving his sentence in the Netherlands, shall be temporarily delivered to a foreign state to appear in court or to be heard as a witness in a criminal case.

If the foreigner is serving his sentence in the Netherlands, the continuance of the said sentence shall not be interrupted by this being done.

ART. 22.

The present law regards as a Netherlander any one who is held to be such by the provisions of the civil code.

Persons assimilated to Netherlanders in accordance with the terms of article 8 of this code shall be considered as foreigners so far as the application of the present law is concerned.

ART. 23.

All papers and documents drawn up in virtue of the present law shall be exempt from stamping and registration, and shall be furnished without charge.

ART. 24.

The present law does not apply to the arrest of deserting seamen, to their return to their vessels, and to the measures to be taken to put them in charge of the consuls of their nation.

[Inclosure 2.—Translation.]

Article 2 of the law of April 6, 1875 (Bulletin of Laws, No. 66), regulating the general terms on which extradition treaties may be concluded with foreign powers, as said article has been modified in order to harmonize it with the new penal code.

Foreigners can only be extradited for the acts hereinafter enumerated, committed outside the Kingdom:

1. (*a*) Attempt against the life or liberty of the king, the reigning queen, the regent, or other head of a friendly state, or undertaken with the design of rendering them incapable of reigning; (*b*) attempt against the life or liberty of the queen not reigning, of the heir apparent of the throne, or of a member of the sovereign family.

2. Murder or assassination, murder or assassination committed on a child.

3. Threats punishable according to paragraph 2 of article 285 of the penal code.

4. Abortion procured by the woman with child or by others.

5. Ill-treatment causing serious bodily injury or death, ill-treatment committed with premeditation, or serious ill-treatment.

6. Rape, or one of the offences against morals, punishable according to articles 243–247, inclusive, of the penal code.

7. Incitement of minors to debauch, and every act having for its object the favoring of corruption of minors, punishable according to article 250 of the penal code.

8. Bigamy.

9. Abduction, concealment, suppression, substitution, or changing of a child.

10. Abduction of minors.

11. Counterfeiting or altering of coins or paper money, undertaken with the design expressed in article 208 of the penal code, or the putting in circulation of coins or paper money, when done intentionally.

12. Counterfeiting or falsifying stamps and marks, punishable according to articles 216 and 217 of the penal code.

13. Forgery, punishable according to articles 225 to 227, inclusive, of the penal code, as well as the keeping or the introduction from abroad of notes of a bank of circulation established by virtue of legal ordinances, with the intention of putting them in circulation as being neither false nor falsified, when the author knew at the moment when he received them that they were false or falsified.

14. False oath.

15. Corruption of public officials, punishable according to articles 178, 363, and 364 of the penal code; extortion, embezzlement committed by officials or by those who are considered such.

16. Arson, in the cases foreseen in articles 157 and 328 of the penal code.

17. Illegal destruction of a building, committed intentionally, punishable according to article 352 of the penal code, or of a building, or of a structure in the cases foreseen in article 170 of the said code.

18. Acts of violence committed in public, with united forces, against persons or property in the cases foreseen in article 141 of the penal code.

19. The illegal act, committed intentionally, of sinking, wrecking, destroying, rendering unfit for use, or injuring a vessel, in the cases foreseen in article 168 of the penal code.

20. Revolt and insubordination of the passengers on board of a vessel against the captain, and of the crew against their superiors.

21. The act, committed intentionally, of endangering a train on a railroad.

22. Theft.

23. Swindling.

24. Abuse of a blank signature.

25. Embezzlement.

26. Fraudulent bankruptcy.

Articles of the new penal code relating to the law of April 6, 1875 (Bulletin of Laws, No. 66).

45. The attempt to commit an offence is punishable if the intention of the author has been shown by a beginning of performance, and if the performance has only remained unfinished in consequence of circumstances independent of his will.

The maximum of the principal penalties attached to an offence shall be diminished by one-third for the attempt.

47. Shall be punished as authors of punishable acts—

(1) Those who commit the act, who have it committed, or who assist in committing it;

(2) Those who, by gifts, promises, abuse of authority, violence, threats, or deceit, designedly provoke the act.

With regard to the latter, account is taken only of the acts which they have designedly provoked, as well as of the consequences of said acts.

48. Shall be punished as accomplices in an offence—

(1) Those who intentionally lend their aid to commit the offence;

(2) Those who intentionally procure the opportunity, the means, or the information for committing the offence.

49. For accomplices the maximum of the principal penalties shall be diminished by a third.

In fixing the penalty, account shall be taken only of the acts which the accomplice has facilitated or favored intentionally, as well as of the consequences of said acts.

81. The act of putting a person into a swoon or into a state of unconsciousness is regarded as violence.

84. All persons elected in the elections ordered by virtue of a provision of the law are considered officials.

Umpires are included in the terms "functionaries and judges;" those who exercise administrative jurisdiction, in the term "judges."

All who belong to the armed force are also considered officials.

92. The attempt against the life or the liberty of the King, of the reigning Queen, or of the regent, or undertaken with the design of rendering them incapable of reigning, shall be punished with imprisonment for life, or for a period of not more than twenty years.

108. The attempt against the life or liberty of the queen not reigning, of the heir apparent of the throne, or of a member of the sovereign family shall be punished with imprisonment for not more than fifteen years. If the attempt against the life has occasioned death, or has been undertaken with premeditation, the punishment shall be imprisonment for life or for a period of not more that twenty years.

115. The attempt against the life or liberty of a reigning prince, or of another head of a friendly state, shall be punished with imprisonment for not more than fifteen years.

If the attempt against the life has caused death, or has been undertaken with premeditation, the punishment shall be imprisonment for life or for a period of not more than twenty years.

141. Those who, in public, with united forces, commit acts of violence against persons or property, shall be punished with imprisonment for not more than four years and six months.

The criminal shall be punished:

(1) With imprisonment for not more than six years, if he destroys property intentionally, or if the violence committed by him has caused any bodily injury;

(2) With imprisonment for not more than nine years, if said violence has occasioned any serious bodily injury;

(3) With imprisonment for not more than twelve years, if said violence has occasioned death.

Article 81 is not applicable to the cases foreseen by this article.

157. Whoever intentionally sets fire to anything, or causes an explosion or an inundation, shall be punished:

(1) With imprisonment for not more than twelve years, if a common danger for property may result from it.

(2) With imprisonment for not more than fifteen years, if danger of death to others may result from it.

(3) With imprisonment for life, or for a period of not more than twenty years, if danger of death to others may result from it, and if the act has caused the death of any one.

164. Whoever intentionally creates a danger to steam communication on a railroad shall be punished with imprisonment for not more than fifteen years.

If the act has occasioned the death of any one, the criminal shall be punished with imprisonment for life, or for a period of not more than twenty years.

168. Whoever intentionally and illegally sinks or wrecks a vessel, destroys it, renders it unfit for use, or injures it, shall be punished:

(1) With imprisonment for not more than fifteen years, if a danger to others may result from it.

(2) With imprisonment for life, or for a period of not more than twenty years, if a danger to others may result from it, and if the action has occasioned the death of any one.

170. Whoever intentionally destroys or injures any building or structure, shall be punished:

(1) With imprisonment for not more than twelve years, if a common danger to property may result from it;

(2) With imprisonment for not more than fifteen years, if a danger of death to others may result from it;

(3) With imprisonment for life, or for a period of not more than twenty years, if a danger of death to others may result from it, and if the act has occasioned the death of any one.

178. Whoever makes a present or a promise to a judge, with a view to influencing the decision of a cause submitted to the judgment of the latter, shall be punished with imprisonment for not more than six years.

If said gift or promise is made with a view to obtaining a condemnation in a penal cause, the criminal shall be punished with imprisonment for not more than nine years.*

Deprivation of the rights mentioned in article 28, Nos. 1 to 4,* may be pronounced.

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*ART. 28. The rights of which the criminal may be deprived by judicial decision in the cases fixed by law are:

(1) The right to be appointed to public functions, or to certain determined public functions.

(2) The right of serving in the armed force.

(3) The right of electing or of being elected in the elections ordered by virtue of a legal ordinance.

(4) The right to be a judicial counsel or administrator; that of being a guardian, or a substituted guardian, trustee, or substituted trustee of other children than his own.

(5) Paternal authority, the guardianship and trusteeship of his own children.

207. Whoever, in cases in which a provision of the law requires a declaration affirmed under oath, or attaches to said declaration certain legal consequences, intentionally makes a false declaration under oath, verbally or in writing, in person or by a special proxy, shall be punished with imprisonment for not more than six years.

If the false oath has been made in a penal matter to the prejudice of the person accused or suspected the criminal shall be punished with imprisonment for not more than nine years.

The promise or affirmation which, by virtue of the law, is substituted for the oath, is regarded as an oath.

The deprivation of the rights enumerated in article 28, Nos. 1–4, may be pronounced.

208. Whoever counterfeits or alters coins or paper money, with the intention of uttering or causing to be uttered said coins or paper money as not counterfeited and not altered, shall be punished as guilty of counterfeiting, with imprisonment for not more than nine years.

209. Whoever intentionally utters, as being neither counterfeited nor altered, coins or paper money, knowing at the moment when he received them that they were counterfeited or altered, or who retains them or introduces them into the kingdom in Europe with the intention of uttering them or causing them to be uttered as being neither counterfeited nor altered, shall be punished with imprisonment for not more than nine years.

212. If one of the offences mentioned in articles 208–211 is committed with regard to foreign coins or foreign paper money, the maximum of the punishment of imprisonment shall be diminished by two years.

213. Whoever intentionally, after learning the counterfeiting or alteration, again puts in circulation counterfeited or altered coins, or counterfeited or altered paper money, shall be punished with imprisonment for not more than three months, or with a fine of not more than three hundred florins.

216. Shall be punished with imprisonment for not more than six years:

(1) Whoever counterfeits or falsifies stamps emitted by the state, with the intention of using them or of causing them to be used by other persons as being neither false nor falsified;

(2) Whoever, with the same intention, manufactures any of said stamps by illegally using genuine punches.

217. Shall be punished with imprisonment for not more than five years:

(1) Whoever affixes false marks for the state, or false workman's marks required by law, to articles of workmanship of gold or silver, or falsifies genuine ones, with the intention of using said articles of workmanship, or of causing them to be used by others, as if the marks affixed to said articles were neither false nor falsified;

(2) Whoever, with the same intention, affixes marks to the articles in question by illegally using genuine punches;

(3) Whoever affixes, fixes, or applies the genuine marks of the state or the genuine workman's marks required by law on gold or silver articles of workmanship other than those on which they were originally placed, with the intention of using said articles, or of causing them to be used by other persons, as if said marks had been placed on them originally.

225. Whoever manufactures falsely or falsifies a writing from which any

right, any obligation, or the extinction of a debt may result, or which is intended to serve as proof, with the intention of using it or of causing it to be used by others, shall be, if any damage may result from such use, punished as guilty of forgery, with imprisonment for not more than five years.

Shall be punished with the same punishment whoever intentionally makes use of the writing manufactured falsely or falsified as if it was genuine and not falsified, if any damage may result from such use.

226. The person guilty of forgery shall be punished with imprisonment for not more than seven years, if the forgery has been committed:

(1) In authentic documents;

(2) In bonds or certificates of the debt of a state, of a province, of a commune, or of a public establishment;

(3) In shares, or obligations, or certificates of shares, or obligations of any association, foundation, or society;

(4) In schedules, records of dividends or of income, belonging to the documents mentioned in the two preceding numbers or in the instruments issued in place of said documents.

(5) In credit or business paper intended for circulation:

Shall be punished with the same punishment whoever intentionally makes use of one of the false or falsified writings mentioned in the first paragraph, as if it was genuine, and not falsified, if any damage may result from such use.

227. Whoever causes to be inserted in an authentic document a false declaration concerning a fact the truth of which the document is to prove, with the intent to make use of said document or to cause it to be used by other persons, as if the declaration was in conformity with truth, shall be, if any damage may result from such use, punished with imprisonment for not more than six years.

Shall be punished with the same punishment whoever intentionally makes use of the document, as if the contents were in conformity with the truth, if any damage may result from such use.

232. Whoever retains or introduces into the kingdom in Europe notes of a Netherlands circulating bank founded by virtue of legal provisions, knowing at the moment when he received them that they were false or falsified, with the intent to put them or to have them put in circulation as being neither false nor falsified, shall be punished with imprisonment for not more than seven years.

236. Whoever, by any act, intentionally renders uncertain the origin of another person shall be punished, as guilty of suppression of birth, with imprisonment for not more than five years.

Deprivation of the rights specified in article 28, No. 1–4, may be pronounced.

237. Shall be punished with imprisonment for not more than four years:

(1) Whoever intentionally contracts a double marriage.

(2) Whoever contracts a marriage knowing that by this marriage the other party contracts a double marriage.

Whoever, when contracting a double marriage, has kept secret from the other party the fact that he was already married shall be punished with imprisonment for not more than six years.

Deprivation of the rights enumerated in article 28, Nos. 1–5, may be pronounced.

242. Whoever by violence, or by threats of violence, forces a woman to have, out of wedlock, carnal intercourse with him shall be punished as guilty of rape, with imprisonment for not more than twelve years.

243. Whoever, out of wedlock, has carnal intercourse with a woman, knowing that she is in a swoon or unconscious, shall be punished with imprisonment for not more than eight years.

244. Whoever has carnal intercourse with a girl under the age of twelve years shall be punished with imprisonment for not more than twelve years.

245. Whoever, out of wedlock, has carnal intercourse with a woman who has attained the age of twelve years, but not yet that of sixteen years, shall be punished with imprisonment for not more than eight years.

Except in the cases foreseen in article 248, there is no prosecution except on complaint.

246. Whoever by violence, or threats of violence, forces a person to commit or to undergo acts of immorality shall be punished, as guilty of attempt against modesty, with imprisonment for not more than eight years.

247. Whoever commits acts of immorality with a person, knowing that she is in a swoon or unconscious, or with a person below the age of sixteen years, or incites the latter to commit or to undergo acts of that character, or to have, out of wedlock, carnal intercourse with a third person, shall be punished with imprisonment for not more than six years.

248. If one of the offences specified in articles 243 and 245–247 has occasioned serious bodily injuries, an imprisonment of not more than twelve years shall be inflicted.

If one of the offences specified in articles 242–247 has occasioned death, an imprisonment of not more than fifteen years shall be inflicted.

250. Shall be punished as a procurer:

(1) With imprisonment for not more than four years, the father, the mother, the guardian or the substituted guardian, who intentionally incites or favors the debauch of his minor child, or of the minor placed under his guardianship or substituted guardianship, with a third person.

(2) With imprisonment for not more than three years, any other person who, for the sake of gain, intentionally incites or favors the debauch of a minor with a third person, or who makes a business of intentionally inciting or favoring the debauch of a minor with a third person.

279. Whoever intentionally withdraws a minor from the authority to which he is legally subjected, or from the care of one who exercises it by right, shall be punished with imprisonment for not more than six years.

An imprisonment of not more than nine years shall be inflicted if any deceit, violence, or threats have been employed, or if the minor is under the age of twelve years.

280. Whoever intentionally hides, or withdraws from the researches of the agents of justice or police, a minor who has been withdrawn or who has withdrawn himself from the authority to which he is legally subjected, or from the care of one who exercises it by right, shall be punished with imprisonment for not more than three years, or if the minor is under the age of twelve years, with imprisonment for not more than six years.

281. Shall be punished as guilty of abduction:

(1) With imprisonment for not more than six years whoever carries off a minor woman against the will of her parents or guardians, but with her own consent, with the intent to secure possession of her either by marriage or out of marriage.

There is no prosecution except on complaint.

(2) With imprisonment for not more than nine years, whoever carries off a woman by deceit, violence, or threats with the intent to secure possession of her either by marriage or out of marriage.

Complaint may be brought: (*a*) If the woman is a minor at the time of the abduction, either by herself, or by one of the persons whose consent she ought to have in order to be able to contract marriage; (*b*) if she is of age at the time of the abduction, either by herself or by her husband.

If the abductor has married the person carried off, no condemnation can be pronounced before the nullity of the marriage has been pronounced.

285. The threat of public violence, with united forces, against persons or property, of an offence endangering the general safety of persons or property, of rape, of attempts against modesty, of an offence against life, of serious ill treatment, or of arson, shall be punished with imprisonment for not more than two years.

If such threat is made in writing and under a fixed condition, it shall be punished with imprisonment for not more than four years.

287. Whoever intentionally takes the life of another shall be punished, as guilty of murder, with imprisonment for not more than fifteen years.

289. Whoever intentionally and with premeditation takes the life of another shall be punished, as guilty of assassination, with imprisonment for life, or for a period of not more than twenty years.

290. A mother who, under the effects of the fear that her confinement will be discovered, intentionally takes the life of her child, at the time of birth or soon afterwards, shall be punished as guilty of infanticide, with imprisonment for not more than six years.

291. A mother who to execute a resolution, made under the effects of the fear that her approaching confinement will be discovered, intentionally takes the life of her child at the moment of birth, or soon afterwards, shall be punished, as guilty of assassination committed on a child, with imprisonment for not more than nine years.

295. A woman who intentionally procures, or causes to be procured by another, the miscarriage or death of her fruit shall be punished with imprisonment for not more than three years.

296. Whoever intentionally procures the miscarriage or the death of the fruit of a woman without her consent shall be punished with imprisonment for not more than twelve years.

If the act has caused the woman's death the criminal shall be punished with imprisonment for not more than fifteen years.

297. Whoever intentionally procures the miscarriage or the death of the fruit of a woman with her consent shall be punished with imprisonment for not more than four years and six months.

298. If a physician, a midwife, or a druggist renders himself an accomplice in the offence specified in article 295 or renders himself guilty or an accomplice of one of the offences specified in articles 296 and 297, the punish-

ments fixed by said articles may be increased by a third, and the criminal may be deprived of the right to practice the profession in which he has committed the offence.

300. Ill usage shall be punished with imprisonment for not more than two years, or with a fine of not more than three hundred florins.

If the act has occasioned a serious bodily injury, the criminal shall be punished with imprisonment for not more than four years.

If the act has occasioned death the criminal shall be punished with imprisonment for not more than six years.

The act of intentionally injuring health is regarded as ill usage.

The attempt to commit this offence is not punishable.

301. Ill usage committed with premeditation shall be punished with imprisonment for not more than three years.

If the act has caused serious bodily injury the criminal shall be punished with imprisonment for not more than six years.

If the act has caused death the criminal shall be punished with imprisonment for not more than nine years.

302. Whoever intentionally inflicts on another a serious bodily injury shall be punished as guilty of serious ill usage with imprisonment for not more than eight years.

If the act has caused death the criminal shall be punished with imprisonment for not more than ten years.

303. Serious ill usage committed with premeditation shall be punished with imprisonment for not more than twelve years.

If the act has caused death the criminal shall be punished with imprisonment for not more than fifteen years.

310. Whoever abstracts a thing which belongs entirely or in part to another, with the intent to appropriate it illegally to himself, shall be punished as guilty of theft, with imprisonment for not more than four years, or with a fine of not more than sixty florins.

311. Shall be punished with imprisonment for not more than six years:

(1) The stealing of cattle in the fields;

(2) Theft committed on the occasion of a fire, an explosion, an inundation, a wreck, a running aground, a railroad accident, a rebellion, a riot or war troubles;

(3) Theft committed during the time allotted to night repose in a habitation, or in an enclosure containing a habitation, by any one who is there without the knowledge or against the will of the person who has the right to be there;

(4) Theft committed by two or more persons united;

(5) The criminal who, in order to commit the theft, has obtained access to the place where the offence is committed, or has obtained possession of the thing to be abstracted by means of effraction, of breaking open, or of escalade, of false keys, of a false order, or of a false dress.

If the theft mentioned in No. 3 is accompanied by one of the circumstances cited in Nos. 4 and 5 an imprisonment of not more than nine years shall be inflicted.

312. Shall be punished with imprisonment for not more than nine years a theft preceded, accompanied, or followed by violence or threats of violence against persons, made with the intent to prepare or facilitate the

theft, or, in the event of being caught in the act, either to render flight possible or to secure to himself or his accomplices in the offence the possession of the thing stolen.

An imprisonment of twelve years shall be inflicted:

(1) If the act has been committed either during the time allotted to night repose in a dwelling, or in an enclosure containing a dwelling, or on the public way, or in a railway train while it is in motion;

(2) If the act has been committed by two or more persons united;

(3) If the criminal has obtained access to the place where the offence is committed by means of effraction or escalade, false keys, a forged order, or a false dress;

(4) If the act has occasioned a serious bodily injury.

An imprisonment of not more than fifteen years shall be inflicted if the act has occasioned death.

316. If the author or accomplice of one of the offences specified in this section is inseparably united in person or property with the person to whose prejudice the offence has been committed, there is no prosecution against the author nor the accomplice.

If he is his separable associate in person or property, or his relative or kinsman, either by direct descent or to the second degree in the collateral line, there is no prosecution against him, except on the complaint of the person to whose prejudice the offence has been committed.

321. Whoever illegally appropriates an article belonging wholly or partly to another, or of which he is the holder otherwise than in consequence of an offence, shall be punished as guilty of embezzlement, with imprisonment for not more than three years or with a fine of not more than sixty florins.

322. Embezzlement committed by a person who is the holder of the thing through his personal service, or his profession, or for a salary in money, shall be punished with imprisonment for not more than four years.

323. Embezzlement committed by a person to whom the thing has been entrusted as a necessary deposit, by either guardians, trustees, administrators, testamentary executors or directors of beneficent institutions or of establishments, with regard to a thing which they hold in such capacity, shall be punished with imprisonment for not more than five years.

324. The provisions of article 316 apply to the offences specified in this section.

326. Shall be punished as guilty of swindling, with imprisonment for not more than three years, whoever, with the intent to procure an illegal profit for himself or for a third person shall have induced any one to surrender a thing, or to contract an obligation, or to extinguish a debt, either by taking a false name or a false character, or by fraudulent intrigues, or by a combination of falsehoods.

328. Shall be punished with imprisonment for not more than four years whoever, with the intent to procure an illegal profit for himself, or for a third person, to the prejudice of the insurer or of the legal holder of a recorded contract, sets fire to or causes an explosion in a thing insured against fire, or sinks or strands, destroys, renders unfit for use, or injures an insured vessel, or one the cargo or freight of which is insured, or on which a recorded loan has been effected.

341. The merchant who has been declared bankrupt or admitted to the judicial assignment of property shall be punished as guilty of fraudulent bankruptcy by an imprisonment of six years at most, if, in fraud or to the injury of the rights of his creditors:

(1) He has invented or does invent charges against the estate, or has failed to represent or does not represent some of the assets, or has embezzled or does embezzle something belonging to the estate;

(2) He has conveyed anything away either gratuitously or for a consideration clearly below its value;

(3) He has given or does give, at the time of his failure, or at a time when he knew the failure was inevitable, any advantage whatsoever to one of the creditors;

(4) He has not complied with or does not comply with the obligation imposed on him of retaining, preserving, and producing books and papers.

343. The manager or agent of a joint stock company or co-operative association shall be punished with an imprisonment of six years at most, if, in fraud, or to the injury of the rights of the creditors of the company or association:

(1) He has invented or does invent charges against the same; he has failed to represent or does not represent assets, or he has embezzled or does embezzle any part of the property;

(2) He has conveyed anything away, either gratuitously or for a consideration, evidently below its value;

(3) He has given, or does give, at the time of its failure, or at a time when he knew that failure was inevitable, any advantage whatsoever to one of its creditors;

(4) He has not complied with, and does not comply with, the obligation imposed on him to retain, preserve, and produce books and papers.

344. Imprisonment of four years and six months at most shall be inflicted on any one who, in fraud and to the injury of the rights of creditors—

(1) In case of a merchant's judicial assignment of goods (forced bankruptcy) or failure, or in view of either, if in the last case the failure or assignment of goods followed, shall have embezzled any part of the estate;

(2) At the time of proving credits, in case of a judicial assignment of goods or failure, invents a credit which does not exist, or raises an existing credit.

352. Imprisonment of four years at most shall be inflicted on any one designedly or illegally destroying or rendering unfit for use a building or vessel belonging wholly or partly to another.

363. Imprisonment of four years at most shall be inflicted on a public officer—

(1) Who accepts a gift or promise, knowing that they are made to him for the purpose of binding him to do or not to do, in the exercise of his office, an act contrary to his duty;

(2) Who accepts a gift, knowing that it is made to him in consequence or by reason of his having done something or his having failed to do something in violation of his duty in the exercise of his office.

364. The judge who accepts a gift or a promise, knowing that they are made to him to influence his decision on a case submitted for his judgment, shall be punished with imprisonment of nine years at most.

The judge who, in accepting the gift or promise, knows that they are made to obtain a condemnation in a penal case, shall be punished with imprisonment of twelve years at most.

366. The public officer who, in the exercise of his office, demands, receives, or retains, on the occasion of a payment, as due to himself, another officer, or any public office whatever, what he knows is not due, shall be punished, as guilty of malversation, with imprisonment of six years at most.

395. Imprisonment of two years at most shall be inflicted on any one being guilty of insubordination, who, having taken passage on a Dutch vessel or fishing boat, shall commit an assault on the captain, or who, being one of the crew, assaults, while on board and in service, a superior officer, or who resists the latter with violence or with threats of violence, or who intentionally deprives him of his liberty of action.

The criminal shall be punished:

(1) With imprisonment of three years at most, if the offence or the assaults which accompanied it have occasioned bodily injury;

(2) With imprisonment of seven years and six months at most, if they have occasioned a grave bodily injury;

(3) With imprisonment of twelve years at most, if they have occasioned death.

396. Insubordination committed by two or more persons acting together shall be punished as mutiny, with imprisonment of six years at most.

The criminal shall be punished:

(1) With imprisonment of seven years and six months at most, if the offense committed by him, or the assaults accompanying it, have occasioned a bodily injury;

(2) With imprisonment of twelve years at most, if they have occasioned a grave bodily injury;

(3) With imprisonment of fifteen years at most, if they have occasioned death.

[Inclosure 3.—Translation.]

Draft of a treaty of extradition.

His Majesty the King of the Netherlands and

having resolved by common accord to conclude a (new) convention for the extradition of criminals, have named for this purpose as their plenipotentiaries, to-wit:

His Majesty the King of the Netherlands:

who, after having communicated to each other their full powers, found in good and due form, have agreed on the following articles:

ART. 1.

The Government of the Netherlands and the Government of engage to mutually deliver to each other, in accordance with the rules stipulated in the following articles, persons, other than their own subjects, who have been convicted of, or charged with, one of the crimes hereinafter

enumerated, committed outside of the territory of the state of which the extradition is requested:

1. (*a*) Attempt made against the life or liberty of the King, Queen regnant, regent, or other head of a friendly state, or undertaken with a view to render them incapable of reigning; (*b*) attempt against the life or liberty of the Queen non-regnant, of the heir presumptive of the throne, or of a member of the reigning family.

2. Murder or assassination; murder or assassination committed on a child;

3. Menaces made in writing and setting out the act to be performed under duress per minas, in so far as the laws of the two countries permit extradition on this ground;

4. Abortion procured by the pregnant woman or by others;

5. Violence which has caused a serious bodily injury or death, violence committed with premeditation, or serious violence;

6. Rape, attempt against chastity, the crime of having carnal intercourse outside of marriage with a girl or married woman under the age of sixteen years, or with a woman above that age, when the guilty person knows that she is in a fainting or unconscious condition; acts of immorality, when the guilty person knows that the person with whom he commits them is in a fainting or unconscious condition, or when the said person has not reached the age of sixteen years; inciting a person under that age to commit or to submit to acts of immorality, or to have outside of the married state carnal intercourse with a third person;

7. Inciting minors to debauch, and every act intended to encourage the debauchery of minors punishable under the laws of the two countries;

8. Bigamy;

9. Kidnapping, suppression of the birth of a child, the substitution or changing of a child;

10. Kidnapping of minors;

11. Counterfeiting or altering coin or paper money, committed with the intention of issuing or causing to be issued the said coin or paper money as genuine and unaltered, or the intentional uttering of counterfeit or altered coin or paper money;

12. Counterfeiting or falsifying stamps and marks of the State, or of workmen's marks required by law, so far as the laws of the two countries permit extradition on this ground;

13. Forgery and the intentional utterance of what is forged or falsified, so far as the laws of the two countries permit extradition on this ground; having in possession or introducing from abroad notes of a bank of circulation chartered under the provisions of law, with the intention of uttering the same as genuine and not falsified, when the offender knew at the time of receiving them that they were counterfeit or falsified;

14. Perjury;

15. Bribery of public officers, so far as the laws of the two countries permit extradition on this ground; malversation in office, embezzlement committed by officers or by those regarded as such;

16. Intentional incendiarism when there may result from the same a general danger to property or a danger to the life of others; incendiarism caused with the intention of procuring for one's self or for a third person

unlawful gain, to the injury of the insurer or of the lawful holder of a contract of marine insurance;

17. Unlawful destruction, caused intentionally, of an edifice belonging wholly or partly to another, or of an edifice or building, when there may result from the same a general danger to property or a danger to the life of others;

18. Acts of violence committed publicly by mobs against person or property;

19. The unlawful act, committed intentionally, of sinking, wrecking, destroying, rendering unfit for use, or injuring a vessel when there may result from the same a danger for others;

20. Mutiny and insubordination of the passengers on board a vessel against the captain and of the crew against their superior officers;

21. The act, committed intentionally, of having endangered the safety of a train on a railroad;

22. Larceny;

23. Swindling;

24. Fraudulent use of a signature in blank;

25. Embezzlement;

26. Fraudulent bankruptcy.

The attempt to commit, and participation in, the offence are included in the preceding list, when they are punishable under the laws of the country from which the extradition is asked.

ART. 2.

Extradition shall not take place:

1. When the offence has been committed within a third country, and when the Government of the said country demands the extradition;

2. When the request is made for the same offence for which the fugitive has been tried in the country from which the extradition is asked, and for which he has been condemned, discharged, or acquitted:

3. If, according to the laws of the country from which the extradition is asked, prescription has run against the prosecution or the sentence before the arrest of the fugitive, or in case the arrest has not yet taken place before he has been summoned before the court for a hearing.

ART. 3.

Extradition shall not take place as long as the fugitive is under prosecution for the same offence in the country from which the extradition is asked.

ART. 4.

If the fugitive is under prosecution or is serving his sentence for another offence than that which has given rise to the request for extradition, his extradition shall not be granted until after the conclusion of the prosecution in the country from which the extradition is asked and, in case of condemnation, until after he has served his sentence or has been pardoned. Nevertheless, if according to the laws of the country which asks the extradition, prescription of the prosecution might result from this delay, his extradition shall be granted, unless special considerations forbid it, under

promise of the return of the extradited person as soon as the prosecution in the said country shall be concluded.

ART. 5.

It is expressly stipulated that the extradited person shall neither be prosecuted nor punished in the country to which the extradition has been granted for any punishable offence whatever not provided for by the present convention, and committed prior to his extradition, nor shall he be extradited to a third state without the consent of that granting the extradition, unless he has had the opportunity again to leave the country aforesaid during one month after he has been tried, and, in case of condemnation, after he has served his sentence or been pardoned.

Persons condemned for crimes to which, under the laws of the state making the demand, the death penalty is applicable, shall be extradited only on condition that the said penalty shall not be inflicted on them.

ART. 6.

The provisions of the present treaty are not applicable to political offences. The person extradited for one of the offences against the universal law, mentioned in Article I, can, consequently, in no case be prosecuted and punished in the State to which the extradition is granted for a political offence committed by him before extradition, nor for an act connected with such political offence.

ART. 7.

Extradition shall be requested through the diplomatic channel, and shall be granted only on the production of the original, or of an authenticated copy either of the sentence of condemnation or bill of indictment or commitment for trial, together with the warrant of arrest, drawn according to the forms prescribed by the laws of the State making the request, and setting forth the offence in question with sufficient clearness to enable the State on which the demand is made to decide whether, under its laws, the case is one provided for by the present convention, and also indicating the penal provision applicable thereto.

ART. 8.

Articles seized in the possession of the fugitive shall be delivered to the state making the demand, if the competent authority of the state on which the demand is made has ordered their delivery.

ART. 9.

Whilst awaiting the request for extradition through the diplomatic channel, the temporary arrest of the person whose extradition may be requested under the terms of the present convention, may be asked:

On the part of the Netherlands by any prosecuting officer (*officier de justice*) or any examining judge (*juge commissaire*);

On the part of

By

The temporary arrest is subject to the forms and regulations prescribed by the laws of the country on which the demand is made.

ART. 10.

The foreigner arrested temporarily under the terms of the preceding article, shall, unless his arrest is to be continued on another ground, be discharged, if, within the space of ——— after the date of the warrant of provisional arrest, the request for extradition through the diplomatic channel, accompanied by the delivery of the papers designated by this convention, shall not have been made.

ART. 11.

When, in the prosecution of a criminal case, one of the Governments shall deem it necessary to examine witnesses in the other state, letters rogatory shall be transmitted for that purpose through the diplomatic channel, and due answer shall be made thereto, always complying with the laws of the country in which the witnesses are invited to appear. In case of urgency, however, letters rogatory may be directly addressed by the judicial authority in one of the states to the judicial authority in the other state.

All letters rogatory intended to request an examination of witnesses shall be accompanied by a French translation.

ART. 12.

If in a criminal case the personal appearance of a witness in the other country is necessary or desired, his Government shall urge him to comply with the invitation addressed to him, and, in case of his consent, he shall receive traveling and hotel expenses in accordance with the rates and regulations in force in the country in which the examination is to take place, except in case the Government making the request shall consider that the witness ought to be allowed a larger sum.

No witness, whatever be his nationality, who, having been summoned in one of the two countries, shall voluntarily appear before the judges of the other country, shall be prosecuted or detained there for prior criminal acts or sentences, nor under charge of complicity in the acts which are the grounds of the trial in which he is to appear as a witness.

ART. 13.

When in a criminal case the appearance of criminals held in the other state or the communication of proof of guilt or documents which are in the hands of the authorities of the other country shall be deemed useful or necessary, the request for the same shall be made through the diplomatic channel, and it shall be duly complied with, unless special considerations forbid it, under condition of returning the criminals and the proof.

ART. 14.

The transit through the territory of one of the contracting states, of a person surrendered by a third power to the other party and who does not belong to the country of transit, shall be granted on the simple production

of the original or an authenticated copy of one of the legal documents mentioned in article 7, provided that the crime which is the cause of the extradition is included in the present convention and does not fall under the provisions of articles 2 and 6, and provided that the transfer takes place, so far as the escort is concerned, with the assistance of the officers of the country authorizing the transit over its territory.

The cost of transit shall be borne by the state making the request.

ART. 15.

The respective Governments mutually renounce all claim for the restitution of the expenses for maintenance, transport and other expenses which may be incurred, within the limits of their respective territories, in the extradition of prisoners who are charged with or convicted of crime, as well as those resulting from the execution of letters rogatory, from the transfer and return of criminals for appearance and from the transmission and return of evidence of guilt or of documents.

In case transfer by sea shall be deemed preferable, the person to be extradited shall be conducted to the port designated by the diplomatic or consular agent of the Government making the demand, and he shall be embarked at its expense.

ART. 16.

The present convention shall take effect from the twentieth day after its promulgation according to the forms prescribed by the laws of the two countries.

From the date of its taking effect, the conventions of shall cease to be in force and shall be replaced by the present convention, which shall continue in force until six months after notice to the contrary from one of the two Governments.

It shall be ratified and the ratifications shall be exchanged within the period of , or sooner if possible.

In faith whereof the respective plenipotentiaries have signed the present convention and have affixed thereto their seals.

Done in duplicate
at , on .

[Inclosure 4.—Translation.]

Memorandum designed to serve as a reply to the questions contained in the circular of his excellency the Secretary of State, at Washington, of November 26, 1888.

1. The Government of His Majesty the King of the Netherlands can in no case grant extradition otherwise than by virtue of a special convention to this effect. This is owing to the provision contained in Article III, paragraph 2 of the constitution. No exception can be made to this rule under any circumstances, not even if reciprocity in this respect be offered by a foreign Government. The extradition of our own subjects can never be granted.

2. A provisional arrest, pending an application for extradition, accompanied by the necessary judicial papers, may take place when provision therefor is made by a convention.

(Article IX of the law concerning extradition.)

According to this article, provisional arrests are made at the request of those foreign authorities designated as competent by the convention.

It is not necessary for this request to be made diplomatically, although it may be stipulated in the convention that it shall be so made. The period during which a person may be held under provisional arrest, pending the receipt of an application for extradition is determined by Article X of the law, and by the stipulations on this subject which are contained in the various extradition conventions.

When an application for extradition has been made, the person arrested is held until a decision has been reached concerning such application, while, if extradition is granted, the person arrested is, of course, held until the extradition takes place.

Provisional arrests may be made in compliance with a request sent by telegraph.

3. Warrants of arrest are issued by judicial magistrates (Article X) and, in the cases provided for in Article XII of the law, they are also issued, provisionally, by police magistrates.

A provisional arrest may be ordered by both judicial and police magistrates. (Article IX.)

A renewal of the warrant of arrest on the receipt of the application for extradition is not necessary.

The laws of the Netherlands recognize no complaint in extradition cases; no reply, therefore, need be made to the questions propounded on this subject.

4. The procedure to be observed in extradition cases is regulated by Articles XIII and XX of the law. The judge examines the person whose extradition is asked for, and gives his opinion. This opinion is addressed to the minister of justice, who, on his own authority, grants or refuses the extradition.

The documents on which the application for extradition is based, and the application itself, are transmitted diplomatically. (Article VIII.) By the subsequent transmission from the ministry of justice to the competent officer in the office of the attorney for the crown, the case is brought before the court.

Authentication of the documents is not required except when it is provided for by treaty, or when it is required by custom.

As has already been remarked (*sub numero* 4,) the minister of justice decides whether an application for extradition is to be granted or denied. His decision is transmitted diplomatically.

7. The seizure of articles found in the possession of the person whose extradition is asked for may take place at the time of his arrest. (Articles IX and XII.) The court decides whether these articles are to be sent to the Government applying for the extradition, that it may use them as evidence, or whether they are to be returned to the person whose extradition is asked for, even in case his extradition is granted. (Article VIII.)

8. The extradition takes place in a locality situated on the frontier, or in a sea-port, but not in the place where the person wanted is held.

The extradition can not take place before the expiration of fifteen days after the person wanted has been examined by the court. (Article XVIII.)

The law, however, fixes no period within which the extradition, when once granted, must take place.

9. The right of transit is regulated by treaty. According to Article XX of the law, all that is needed, in order that the transit of a person wanted by a third power may be granted, is that such power shall have an extradition treaty with the Netherlands, and that the offence for which the extradition has been granted be mentioned in such treaty.

Transit through the territory of the Netherlands takes place, so far as the escort is concerned, with the co-operation of Dutch officers.

10. As to the expense growing out of extradition cases, the rule is that the Government granting extradition defrays the expense of the keeping and transportation of the person wanted through its own territory; the expense of the transit is defrayed by the state that has applied for the extradition.

PERU.

January 14, 1889, Mr. Buck inclosed the following translation of a note which had been addressed to him by the Peruvian minister of foreign relations:

SIR: Acceding with pleasure to the desire manifested by your excellency in your note of the 3d inst., I have the honor to answer the points referred to in Mr. Bayard's communication, copy of which I received. I inclose to your excellency the text of the Peruvian law of October 28, 1888, which discloses the principles according to which my Government is willing to concede extradition, exacting reciprocity, even in the cases where no treaty should exist with the nation asking for it.

The several articles of said law give an answer to the questions of paragraphs 1st, 2nd, 3rd, 4th, 7th, and questions of the 8th in regard to the transit through the territory of guilty parties taken from frontier nations, and it only remains for me to amplify some details in view of the custom of this department.

The documents accompanying a demand for extradition in conformity with article 8th of the law, sections 1st and 2d, should be authenticated in the form established by the rules of each country, and by the ministry or secretaryship of foreign relations, and this authentication should be certified by the Peruvian diplomatic or consular agents, or by some functionary of the demanding country residing in Lima.

As to the 6th question, a decree of the Government decides the extradition, and is communicated in a dispatch to the demanding country.

The questions under the 8th point touch matters of details that would be arranged in view of the especial circumstances of the case; but it can be stated that the delivery of the party demanded would be made immediately after the agreement to extradite him, and at the nearest port to the place

where he should be detained, if it was a question of a nation with which Peru had maritime communication; and in the briefest time possible he should be taken out of the country by the agents having him in custody.

The expenses referred to under head 10th would be chargeable to the government to which the extradition was conceded, there being no regulation of treaty on the subject.

In conclusion, I will add that the terms of the 7th question are far too general, and more comprehensive than those of article 10 of the law. This refers solely to papers and other things bearing upon the crime and its authors, without treating of the delivery of other property or effects that the fugitive might have been able to acquire during his residence in Peru. I consequently believe that such property or effects would not be delivered. There would remain, however, a resort to the judicial tribunals by civil proceedings, which would be conducted in accordance with Peruvian legislation.

Your excellency will find annexed a copy of "El Peruano," the official bulletin, in which is published the law to which I refer in this despatch; and in regard to the treaties in force upon extradition, I beg to mention that the greater part have come to an end, and others have been abandoned, giving room for the conclusion of new agreements that will be in accordance with the principles declared by the legislative power.

I take, etc.,

ISAAC ALZAMORA

[Inclosure.—Translation.]

Peruvian extradition act of October 23, 1888.

ANDRES A. CACÉRES, *Constitutional President of the Republic.*

Whereas Congress has passed the following law:

The Congress of the Republic of Peru considering—

That it is necessary to establish the general principles by which the executive power is to be governed in the treaties which may be made on the subject of extradition, has passed the following law:

ARTICLE I. The executive can hand over to the governments of foreign countries, on the condition of reciprocity, all persons accused or condemned by the tribunals of the nation demanding them, provided that the crime or offence in question is specified in the present law and that it was committed within its territory or waters or merchant vessels on the high seas, or on its men of war wherever they may be.

ARTICLE II. Extradition may be granted for all those offences to which may be applied the sentence of death, penitentiary, house of correction, forced labor, or imprisonment for not less than two years, according to the laws of Peru.

ARTICLE III. Extradition will not be granted in any case—

1. When the person demanded was a Peruvian citizen by virtue of birth or naturalization previous to the act which occasions the demand for extradition. The case is excepted of a nation having a common boundary where compacts in regard to citizens may be adjusted according to reciprocal ar-

rangements which can in no way be rendered more oppressive [for such citizens] than those made in this law for foreigners.

2. When the offences committed have, in the opinion of the Government of the Republic, a political character, or have been committed in connection with the same.

3. When, in accordance with the laws of Peru, the prosecution for the offence which gave rise to the demand for extradition has been prescribed.

4. When the person claimed has been already tried and sentenced in the Republic for the same offence or for another equal or greater one.

ARTICLE IV. If the person demanded is a slave, the extradition will not be granted except when the nation claiming him engages itself to try him as a free man, and to consider him always as such.

ARTICLE V. If, at the trial of the offence that gave rise to the extradition, it should be discovered that the culprit is guilty of another distinct and graver one, comprised likewise in the treaty of extradition, or in this law, the government demanding him can cause him to be tried for this latter offence, so informing the Government of Peru.

On conceding the extradition it shall be stipulated that the sentence of death shall not be inflicted upon the culprit, and the Government shall demand, to such end, on delivering over the culprit, that the final sentence against him be communicated to it.

ARTICLE VI. In case that, in accordance with the prescription of paragraph 1st of Article III, the Government should not be obliged to give up the culprits demanded, these may be tried and punished according to the laws of the Republic, provided that the sentence is communicated to the government that has made the demand for them.

ARTICLE VII. If two or more governments should solicit the extradition of the same individual, it remains for Peru to decide, according to circumstances, to which one he is to be delivered.

ARTICLE VIII. The demand for extradition can be made direct by a government through the diplomatic channel, or through any functionary sufficiently authorized to do so, it being required to be accompanied by—

1st. The condemnatory sentence or preliminary proceedings that, according to the law of the country in which the offence has been committed, are sufficient to justify the arrest and bringing to trial of the person accused;

2nd. All the data necessary to prove the identity of the party claimed; and

3rd. A copy of the legal provisions of the claiming nation, applicable to the fact that occasions the demand.

ARTICLE IX. In urgent cases the provisional detention of the accused can be ordered, if the government claiming him solicits it by postal or telegraphic communication; the detention terminating when, within three months, to be counted from the arrest, the demand is not formally made in the manner established in the preceding article.

ARTICLE X. When there is ground for extradition, the papers and other objects that have relation with the offence and the offenders will be delivered to the demanding nation under condition of returning them when the suit is terminated, if any person lays claim to them.

ARTICLE XI. The Government may authorize the transit through the

territory of the Republic of the culprits extradited by neighboring nations, provided that they are not Peruvian citizens, requiring the authorities to take the necessary measures to prevent escape.

ARTICLE XII. The demand for extradition once made, the ministry of foreign relations will transmit it to the supreme court, which, after hearing the fiscal attorney, will give its opinion upon the legality or illegality of the demand according to this law. In virtue of said opinion, the President of the Republic will decide with the council of ministers on the demand for extradition.

ARTICLE XIII. The executive shall denounce at their maturity all the treaties of extradition that are not made in accordance with the present law.

Let it be communicated to the executive in order for its fulfilment.

Given at the chamber of sessions of Congress at Lima, October 17th, 1888.

M. CANDAMO,
President of the Senate.
MANUEL MARIA DEL VALLE,
President of the Chamber of Deputies.
JOSÉ V. ARIAS,
Secretary of the Senate.
THEODOMIRO A. GADEA,
Secretary of the Chamber of Deputies.

To His Excellency the PRESIDENT OF THE REPUBLIC.

Now, therefore, I ordain that it be published, placed in circulation, and be duly fulfilled.

Given at the Government House at Lima, October 23, 1888.

ANDRES A. CACÉRES.

PORTUGAL.

December 27, 1888, Mr. Lewis transmitted to the Department the following note from the minister of foreign affairs:

MINISTRY OF FOREIGN AFFAIRS, POLITICAL DIVISION,
Lisbon, December 22, 1888.

I have the honor to acknowledge receipt of your excellency's note of 14th inst., accompanying a circular of your Government in which certain questions relative to extradition of criminals from this country are asked.

I have to inform your excellency that the Government of His Majesty is ready at all times to consider requests for extradition made by nations with which it has no treaty to that effect, reserving, however, the right to refuse.

This concession is not subject to any express conditions; it is of the free will of the Government.

We do not deliver up Portuguese subjects.

We grant provisional arrest in compliance with a request made diplomatically by telegraph, or by writing, affirming the evidence of witnesses or previous condemnation of the individual claimed.

The time of temporary imprisonment varies according to the greater or

lesser distance of the country claiming the accused and consequent facility or difficulty of presenting the necessary documents for the extradition.

The order of imprisonment is given by the administrative authorities.

It is not necessary to issue a new order for imprisonment after the arrival of the documents requesting extradition.

The judicial authorities can not grant the extradition and they do not intervene until they are requested to do so by the individual claimed; but the usage is to consult the procurador geral of the Crown upon the legality of the extradition asked.

The opinion of the procurador geral of the Crown is purely consultative, but the executive power is accustomed to conform its procedure with it.

Extradition is granted in transit. The escort of the individual delivered up across the territory is made by the police of the country traversed.

There being no stipulation to the contrary the expenses are to be met to the country requesting the extradition.

All other points and even these are found printed by the various conventions of which I send enclosed copies according to your excellency's wish.

These conventions define the rights now in force, seeing that there is no general law which regulates the granting of extradition.

I avail myself, etc.,

BARROS GOMES.

RUSSIA.

January 21, 1889, Mr. Tree inclosed a translation of a memorandum from the ministry of foreign affairs, which was as follows:

Memorandum.

1. Extradition in Russia is governed by conventional regulation. Nevertheless, the mperial Government is free in the absence of international obligation to grant, on the basis of entire reciprocity, the surrender of persons who have taken refuge in its territory, with the exception of its own subjects.

2. The provisional arrest of a fugitive may be effected according to the forms and regulations prescribed on the requisition of a foreign government transmitted by diplomatic channel. This requisition, emanating from the competent authority of the demanding country, should establish:

(*a*) The identity of the person;

(*b*) His nationality and calling;

(*c*) The criminal charge, the nature and date of the criminal act.

Provisional detention is obligatory by virtue of a treaty, and ceases generally to be prolonged if within the delay of 20-60 days from the date of the arrest of the fugitive the formal demand of extradition accompanied by necessary proofs has not been made.

According to some treaties concluded by the Imperial Government, the foreigner may be arrested provisionally on a simple notice transmitted by letter or telegram, on condition, however, that this notice be regularly given by diplomatic channel.

3. The warrant of arrest of the fugitive malefactor charged with or convicted of crime is issued by the minister of justice. If the demand of arrest is followed in time by a regular requisition for extradition the accused is held in arrest without any new warrant for the purpose being required. The minister of justice being alone charged with the instruction and execution of the demand of extradition, there is no necessity for action on the part of the judicial authority in order to maintain the arrest. It is effected under the care of the executive authority.

4. It is the same case in all things in the procedure of matters of extradition; the judicial authority takes no part in the examination of the charges brought against the accused and of the papers brought in support of the requisition for extradition. These documents are transmitted by diplomatic channel to the minister of foreign affairs, who states their authenticity and communicates them to his colleague, the minister of justice.

5. The requisition for extradition should be accompanied by an authentic legal copy of the sentence of the court, or by a copy of warrant of arrest, or by any other judicial document equivalent, rendered by a judge or a magistrate, duly authorized to this effect, and indicating the crime or the offence of which there is question, as also the penal disposition applicable to it. The demanding government is obliged to furnish these documents with the usual seals and to have them legalized by the competent agent of the executive authority. The official character of this latter should be, also on its part, attested by the diplomatic agent of the Russian Government.

6. Once that the requisition by the diplomatic agent of the demanding government has been accepted, the minister of foreign affairs examines it from the point of view of international law and of treaty. After this first examination, the demand for extradition, if regular and conformable to the stipulations of the treaty, is transmitted to the minister of justice, with the observations which it may have elicited. This minister decides definitively as to its action, and gives notice thereof to the minister of foreign affairs and to the minister of the interior. This last insures the execution of the requisition in causing the arrest of fugitive and in delivering him to the foreign authorities, notified by diplomatic agency.

7. The proofs of conviction and the objects found in possession of the fugitive are seized, if necessary, and delivered to the demanding government at the same time as the delivery of the person arrested, and even in the case when the extradition, after having been accorded, might not take place by reason of the death or of the flight of the criminal. It is, however, to be observed that the rights of third parties to these objects as also the rights of the Imperial Government are always reserved.

8. The fugitive whose extradition has been granted is thereupon, as soon as it can be done, delivered to the demanding government at a point on the frontier indicated in advance by the imperial authorities. If the criminal is to be given up at a port, the foreign government has the choice of designating it. According to some treaties a delay of 3 months is granted to the diplomatic agents of the foreign government for the sending away of the person arrested, placed at its disposition.

9. The transit of the person extradited may be authorized by the minister

of justice on the simple production by diplomatic channel of one of the documents in the case mentioned in paragraph 5. This authorization could only be accorded to the powers which grant on their territory the same privilege to the Imperial Government.

The transit, as regards escort, is accomplished with the assistance of Russian functionaries, but at the expense of the demanding country.

10. All the expenses caused by the arrest, detention, and transit of the persons claimed, as also the expenses of the delivery and of the transport of the objects found in possession of the fugitive, are at the charge of the demanding state, unless otherwise stipulated by special agreement.

SWITZERLAND.

The following is taken from a discussion of extradition procedure in Switzerland (13 Revue de droit int. et de lég. comp., 1881, pp. 49–51), by M. Alfred Martin, an advocate of Geneva:

Demands for arrests are addressed to the executive authority. In some of the treaties it is provided that such demands may be directly made to a judicial or administrative authority of one of the two states.

When a demand for arrest is received the federal council asks the government of the canton where the fugitive resides to arrest him.

The individual who has been provisionally arrested has the right to contest the demand for extradition. If he pretends that the demand is contrary to the existing treaty between Switzerland and the demanding country, the matter is submitted to the examination and decision of the judicial power. If the fugitive does not contest the application of the treaty, the executive orders and carries out the extradition. But if he brings the matter before the federal tribunal, its decision is final. The federal council is deprived of its control over the affair.

By a judgment of the federal tribunal of March 22, 1879 (arrêt Massit), it was decided that treaties of extradition are like laws of procedure, and that in general they apply upon their promulgation to all prior acts.

It is an acknowledged principle that extradition can only take place for an act committed outside of the territory of the state on which the requisition is made. The federal court referred to this elementary rule in a very recent decision relative to a requisition from France with regard to an act which had been committed on Swiss territory. Of course the extradition was refused.

It is also indisputable that an act, in order to give rise to extradition, must have a penalty attached to it by the law of the country on which the requisition is made. The federal court made application of this principle in a very interesting case. It consisted in a demand for extradition made by Germany for embezzlement. The accused had taken refuge in the canton of St. Gall. Now, according to the law of that canton, a prosecution can be instituted for that act only on the complaint of the person wronged, and the criminal proceedings had been instituted officially. For this reason the extradition was refused.

Still it is not necessary that the act charged be designated in the same way in the two codes; it is sufficient that the act be considered a crime or an offence by the two codes.

The multiplicity and variety of the laws of the cantons sometimes renders the application of the international conventions a little difficult. Take, for instance, an act which is punishable in almost all the republics composing the confederation, but which is not mentioned in the code of the canton in which the fugitive is. Can it be said that the act is not punishable in Switzerland? Must the extradition be refused? The federal court has admitted that Switzerland may grant the extradition of a person for acts which are punished by the code of Germany on the one hand, and by a certain number of Swiss codes on the other, when Germany makes the requisition, provided that the repression of such acts is in conformity with the general interests.

It should be observed that the court, in this decision, bases its action on the fact that the treaty with Germany does not require that the act with which the accused is charged be punishable under the codes of both countries. The decision would probably be different if the application of another treaty was concerned.

Persons surrendered to the country making the requisition can not be tried for any act except that for which the extradition was granted. Application was made of this rule in the case of two persons surrendered to Switzerland, one by Holland, the other by England, as charged with a certain offence. They are demanded from Switzerland by the Grand Duchy of Baden as being guilty of another offence. The extradition is refused as long as Holland and England withhold their consent.

TURKEY.

December 28, 1888, Mr. Straus made the following report:

SIR: Replying to your circular instruction of November 26, 1888, respecting the subject of international extradition as practiced by the Government to which I am accredited, I have the honor to report:

The subject of extradition in this empire by reason of the capitulations and the rights of extraterritoriality may be separated into three distinct classes:

First. When the fugitive criminal whose surrender is demanded is an Ottoman subject.

Second. When the fugitive is a subject of the demanding state.

Third. When the fugitive is neither an Ottoman subject nor subject of the demanding state, but of a third power.

Reverting to the above enumerated classes:

First. When the fugitive criminal whose surrender is demanded is an Ottoman subject. The Porte in such a case does not consent to the surrender of its own subjects, and, as I am informed, it has no convention or understanding, through exchanged diplomatic notes or otherwise, whereby it is obligated to make surrender.

Second. When the fugitive is a subject of the demanding state. By the treaties and capitulations granting and regulating extraterritoriality in the Ottoman Empire, the fugitive is regarded as being within the jurisdiction of the demanding state, and he is arrested, tried, or transported by the consul of such demanding state upon such evidence and by such procedure as is prescribed by his Government for the trial of criminals.

If the consul is unable to make the arrest through his own officials, and finds it necessary to ask for the assistance of the Porte, application is made therefor to the Porte, and such assistance is usually given, though it is not obligatory upon the Porte to render it.

Third. When the fugitive is neither an Ottoman subject nor a subject of the demanding state, but of a third power, then the extradition depends upon the conventions or practice between the demanding state and the state of which the fugitive is a subject.

Most governments, in matters relating to extradition, so far as concerns their own subjects, regard the Ottoman Empire, as it were, one of their colonies, and their consuls, as a rule, cause the arrest of the fugitive, try and convict him, or convey him to one of their own ships and transport him to place of venue for trial, according to their regulations or laws upon the subject.

It also happens in practice that when the fugitive is a Turkish subject such fugitive is conveyed to a ship of the demanding state, and once thereon is taken under arrest, as if being on the territory of the demanding state, and thence transported to the place of trial.

There are no treaties of extradition excepting the one with the United States concluded in 1874, but there is a disposition on the part of the Porte to claim that it is not in force, in that they couple its ratification with the treaty of naturalization which is still in negotiation. I fail to see what the one treaty has to do with the other, and know of no valid reason why the former treaty should not be binding. In any event such a treaty has much more advantage for Turkey than for America, in that fugitive American citizens can be extradited, as it were, under the power vested in our consuls by reason of extraterritoriality.

Although Turkey has no other treaty of extradition than with the United States, yet provisions are contained in the ancient capitulations with Russia and with Austria, by which it is provided that they reciprocally will surrender certain classes of fugitives, such as sailors and slaves, provided they have not embraced the religion of the country of refuge, which in Turkey would be equivalent to a change of nationality.

I am informed at the Porte that a recent arrangement, not in the form of a convention, but by exchanged notes, has been entered into between it and Russia for reciprocal extradition, and a similar arrangement is in course of negotiation also with Roumania.

I am also informed at the Porte that it has never interfered with or objected to the right of transit across its territory of criminals surrendered by a third state to a foreign government.

No law on the subject of extradition exists in this empire.

I have, etc.,

O. S. STRAUS.

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